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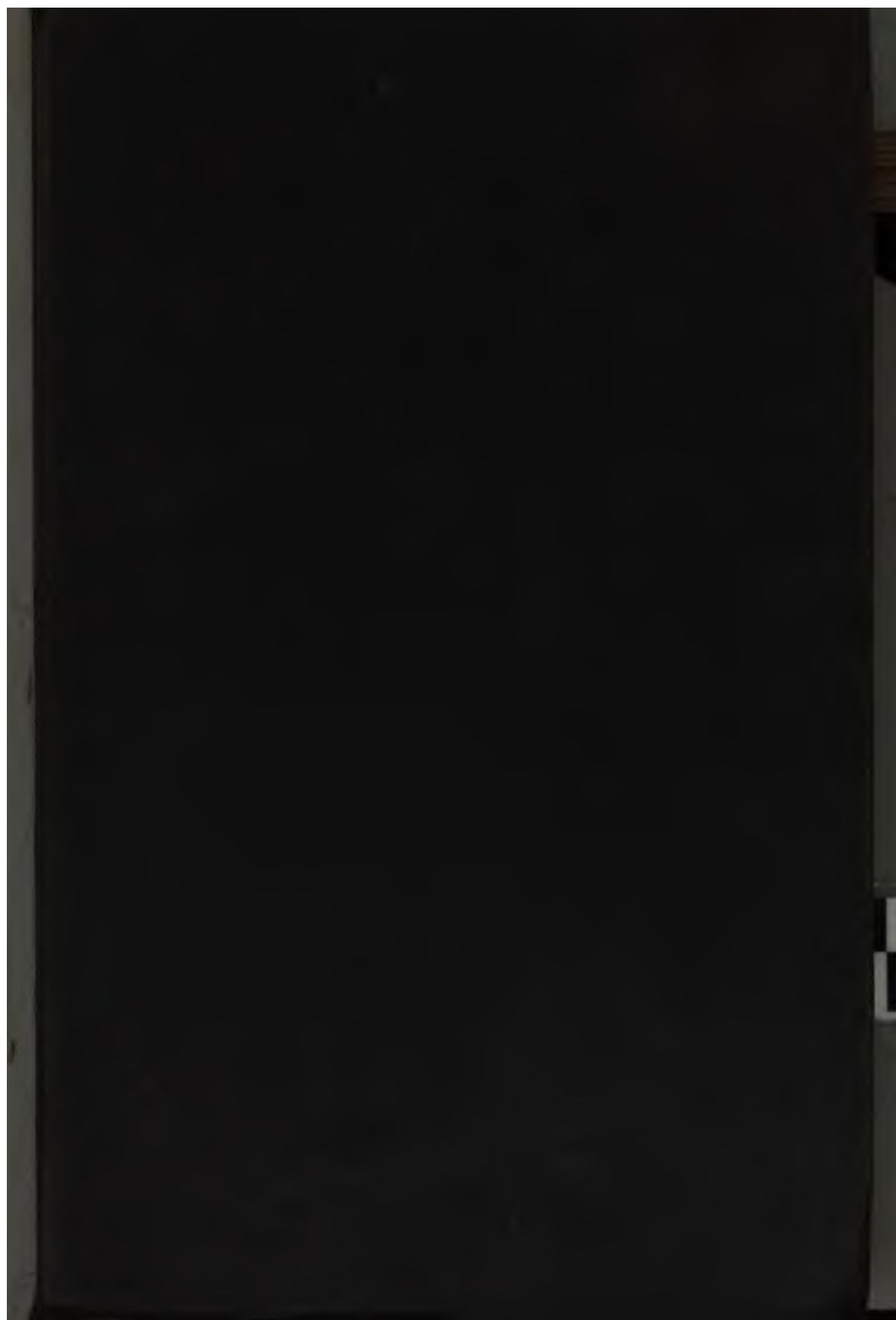
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**REPORT**  
OF  
**PROCEEDINGS ON THE CLAIM**  
TO THE  
**BARONY OF L'ISLE,**  
*IN THE HOUSE OF LORDS.*

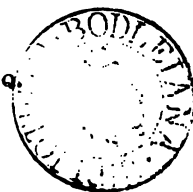
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WITH  
**NOTES, AND AN APPENDIX**  
CONTAINING  
**THE CASES OF ABERGAVENNY, BOTETOURT,**  
AND  
**BERKELEY;**  
ACCOMPANIED BY OBSERVATIONS ON BARONIES BY TENURE.

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By **NICHOLAS HARRIS NICOLAS, Esq.**  
OF THE INNER TEMPLE, BARRISTER AT LAW.

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**LONDON:**  
**WILLIAM PICKERING.**  
**STEVENS AND SONS.**  
**MDCCCXXIX.**



TO  
PHILIP CHARLES,  
SON AND HEIR OF  
SIR JOHN SHELLEY SIDNEY,  
OF PENSHURST, BARONET,  
ELDEST CO-HEIR AND CLAIMANT OF THE  
BARONY OF L'ISLE,  
AND ELDEST CO-HEIR OF THE BARONIES OF  
BERKELEY AND TYES,  
THIS VOLUME  
IS RESPECTFULLY DEDICATED.



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Clun.	Sandford.
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Dispenser.	Strange.
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	Zouche.

SEE INDEX.



## PREFACE.



It is remarkable that, whilst the decisions in the courts of law, relating to property and to suits of minor interest, have been accurately reported, scarcely any effort has been made to record the proceedings before the highest tribunal in the kingdom on claims to the most important possession to which a subject can aspire—the dignity of a Peer of the Realm.

The only works in which those claims are noticed are “Collins’s Precedents of Baronies by Writ,” “Cruise’s Treatise on Dignities,” and in the “Report of the Gardner Case,” by Denis Le Marchant, Esq.; but however valuable the first of those volumes may be, and its utility is unquestionable, it consists more frequently of abstracts of claimant’s cases and collections of precedents and opinions, than of the proceedings before the House, or before the Commissioners to whom claims were referred. It was not so much the object of Mr. Cruise’s

labours to report cases as to adduce decisions with reference to his observations, which necessarily confined him to a brief statement of the leading points of the various claims to which he has alluded. In the Gardner Case, the law which regulates the descent of peerages was not agitated, as distinct from the law which governs the descent of property. The question was simply one of legitimacy, and the importance of the general principle involved in the decision, as well as the very able manner in which the Editor has illustrated the subject, give to that work strong claims on the attention of jurists in all countries.

This volume is, therefore, the only Report of the Proceedings on a Claim in which the law of Peerage was involved that has been published; and it may be hoped that it will tend to render the law on the subject more fully understood, since there was scarcely a point connected with dignities which was not adverted to in the Committee. When it is remembered that numerous individuals are, or by the mere course of nature may become, personally interested in Baronies which originated in writs of summons; that a claim to a peerage cannot be brought to a conclusion before the House of Lords without an expense of many thousand pounds; and that there is no object of ambition more natural than the desire to recover that hereditary seat in the legislative assembly which our ancestors possessed, it is extraordinary that the proceedings of

the House of Lords on those claims have not been more attentively regarded by the public at large, and more carefully reported.

It is not on grounds of a general nature only that the claim to the Barony of l'Isle merits particular notice. The law on Baronies by Writ, which has been repeatedly recognized in decisions of the House of Lords, and uninterruptedly acted upon for centuries by the Crown, namely, *that a writ of summons to parliament and a sitting, in consequence of such writ, created a dignity to the party and the heirs of his body, without reference to the period when such writ and sitting occurred*, was, it appears, doubted by the Committee; the case of Neville, in the reign of James the First, when the Judges determined that such was the law, was said never to have occurred; and a period was suggested when baronies, which originated in writs of summons, first became hereditary.

Under these circumstances it is not too much to say, that if a solitary precedent could avail against innumerable decisions, against the practice of ages, and against the fact that fourteen peers at this moment exist by virtue of writs long antecedent to the period in question, the principle on which the l'Isle case was decided would tend to change the law on the subject; and it consequently becomes very desirable that the grounds on which a new law is sought to be formed, and the *dicta* of Judges who lived upwards of two centuries ago overturned,

should be submitted to the attention of those personages who may hereafter be called upon to pronounce on a similar claim, as well as of that part of the legal profession, and of the public, which may be interested in the descent of dignities.

In illustration of the various statements of Counsel and of the Committee, numerous notes are introduced, and more particularly with reference to the opinion on Baronies by Writ, which the Editor has felt it his duty to dispute ; but it is hoped, that his remarks are expressed with a proper regard for the rank and merits of the learned individual by whom those views on the subject are entertained.


Whatever may have been his reluctance to controvert those views, it has been forgotten in the importance of the subject, and by finding that a decision, founded on what is presumed to be the law on baronies by writ, was described by the present Lord Chancellor, then the Attorney-General, as being “ proper and just, and that it was impossible for the House to have pronounced any other judgment upon that claim<sup>1</sup> ;” and also, that it is the opinion of the present Lord Chancellor of Ireland, and of the present Vice Chancellor, then the petitioner’s counsel, that the “ distinction raised by the noble lord as to the period when the writs were issued, is not founded on any sound principle, but is at variance with the precedents on the Journals of the House<sup>2</sup>.”

<sup>1</sup> The case of Botetourt, p. 152.

<sup>2</sup> p. 294.

Fortified by such authorities, and deeply impressed with the consequences which must attend the adoption of the idea that baronies were not hereditary before the 5th Ric. II., or of the opinion expressed by a member of the Committee that there should be a limitation to the period when titles may be claimed, because those positions seem to militate against the principle on which the House itself is constituted, and are destructive of the highest privilege of the Peerage, namely, that nothing but a conviction for delinquency can impede the descent of a dignity, without relation to the period when it was bestowed, or to the time it may have been in desuetude; and more than all, from being persuaded that those views of the subject are not well founded, he has endeavoured to prove their fallacy with a zeal which could only arise from conviction.

It was his first object to establish the truth of the case reported by Lord Coke in the 8th Jac. I., when the Judges decided that a writ and sitting created an hereditary barony, because the suspicion entertained by a Noble Lord might have influenced his opinion. Of the general accuracy of that report, such evidence has been adduced in the notice of it in the Appendix, as to prove that the doubts which have been expressed are unfounded; whilst the notes present many decisions before that case occurred, which are strictly consistent with the exposition of the law on that occasion.



Although it is contended that the apparent grounds on which the l'Isle case was decided are at variance with precedents and with the law, as it has been laid down by the most distinguished writers, and acted upon for several centuries by the House and the Crown, it is by no means to be supposed that the decision itself was not a proper one.

To constitute an hereditary barony there must, it is said, be writs of summons to, and sittings in, Parliament, and the proof of the latter must be by the Records of Parliament. It is not certain whether by "Records of Parliament" is meant only the "Rolls of Parliament," which are full of chasms, and are otherwise excessively imperfect, or include records which, though not entered on the Rolls, are dated in Parliament, and which appear from other circumstances to be records of transactions which unquestionably took place in Parliament. On no occasion, however, has the House received any other proof of sittings than the Rolls of Parliament or the Journals; but the point did not arise in the l'Isle case, because though there were altogether fifteen writs, one to Gerard de l'Isle, and fourteen to his son Warine de l'Isle, and though eleven of the Parliaments to which he was summoned actually met, there was no *proof* on the Rolls or otherwise that either of them ever sat in Parliament.

That Warine de l'Isle did sit in Parliament in pur-

suance of one or all of those writs, no one who is acquainted with the history of this country in the fourteenth century can for a moment hesitate to believe, and on one particular occasion there was the strongest presumptive evidence of the fact; but as there was not that proof of sitting which the House has required in previous cases, there would have been nothing inconsistent with former decisions, or with what has been laid down as law, if it had resolved that the petitioner had not made out his claim, on the ground that a proof of sitting was indispensable, and that no such proof, by the Records of Parliament, had been shown. Whether a sitting in Parliament upon a writ of summons was always deemed necessary to create an hereditary dignity, may perhaps be questioned from a letter to Maurice Lord Berkeley from the Chief Baron of the Exchequer in the 14th Hen. VIII. 1531, in which it is said, that "the entering of the writ in the Parliament Roll, and requesting a peer to act as his proxy, gave him, "*by matter of record*, the full estate and degree of a baron<sup>1</sup>;" but since the 8th Jac. I. 1610, when the opinion of the Judges was pronounced on the point, no barony by writ has been allowed without a sitting in Parliament being proved.

As the claim to the barony of l'Isle might have been resisted on the ground of a want of a proof of sitting,

<sup>1</sup> See p. 325.

it is needless to consider whether there were any other obstacles to its success. How far it was prudent to urge a claim derived through an attainted ancestor, or supposing that the attainder did not affect the interest of the co-heirs of the dignity, or if it did, that their interest was revived by the act of restitution in blood, whether it was not more advisable to have claimed the barony of Berkeley created by the writ of the 23rd Edw. I., for which there are several proofs of sittings, or the barony of Tyes, which was created in the 27th Edw. I. to Henry le Tyes, who was summoned to, and present in, the Parliament at Lincoln in the 29th Edw. I., of which dignities the petitioner was also the eldest co-heir, instead of claiming a barony, for which no proof of sitting by the Records of Parliament can be found, and producing two charters as part of the case, which charters, if true, show that the dignity did not originate in the manner necessary to establish the petitioner's claim, it is now useless to inquire; but great doubts may be entertained whether the claim was placed in the most eligible and strongest light of which it was susceptible.

The proceedings before the House have been printed from the notes of the shorthand writer with no other alterations or abridgments than were absolutely necessary in a report of the speeches of counsel. The opinions of the present Lord Chancellor of Ireland, and the Vice-Chancellor of Eng-



land, on the effect of the resolution of the House, are added; and an Appendix, containing

- I. The CASE OF NEVILLE, LORD ABERGAVENNY, in the 8th Jac. I., in which the Judges pronounced the Law relative to baronies by writ, with remarks tending to remove the doubt of that case having occurred.
- II. The Case of the BARONY OF BOTETOURT, decided in 1764.
- III. The Case of the BARONY OF BERKELEY, to which a claim as a Barony by Tenure is now pending before the House; with observations on BARONIES BY TENURE generally, including a Report of all the cases in which the question has been agitated, namely, in those of ARUNDEL, L'ISLE, ABERGAVENNY, Roos, and FITZWALTER, with the remarks of the Lords' Committees on the dignity of the Peerage thereon.
- IV. and V. Two Patents, the one of the creation of Sir Arthur Plantagent as Viscount l'Isle, and the other of the creation of Alice Lady Dudley, as Duchess Dudley, which are cited in the l'Isle case.
- VI. Original notes of the proceedings in the Parliaments of the 3rd and 27th Hen. VIII., containing the names of the Peers present, which are not printed in the Lords' Journals.
- VII. Observations on Precedency in the 14th

and 15th centuries, and on the question whether dignities granted by patent to the heirs of the body of a grantee were deemed to convey the dignity to his heirs general.

Although the utmost care has been taken to render the statements in the Notes and Appendix correct, it is possible that some errors may be detected: for these neither an explanation nor an apology is necessary to such persons as can appreciate the labour of forming precedents and meeting objections, not from previous Reports or indexed Cases, for of such very few exist, but from an examination of the descent of every Barony by Writ that has been created; from an inquiry into the causes of the anomalous cases which have given rise to the idea that Baronies were not hereditary before the fifth year of the reign of Richard the Second; and from the effort to deduce from those investigations, and from the Rolls of Parliament and other records, as well as from the general history of the country and state of society in the middle ages, a conclusion as to the nature of the dignity of a Baron of the Realm at that period.


To the Reports of the Lords' Committees on the Peerage, it will be seen that the Editor has frequently adverted; and the fact that he has occasionally shewn that the statements therein are not correct, and, in a few instances, doubted the justice of the opinions contained in them, will, he hopes,

prove the sincerity with which he expresses his respect for the learning and laborious research, which are their general characteristics.

To Philip Charles Sidney, Esq. the Editor is indebted for the MSS. from which the proceedings are printed ; to his friend Charles George Young, Esq. York Herald, for much valuable assistance, the importance of which cannot be too highly appreciated, or sufficiently acknowledged ; and to Thomas Duffus Hardy, Esq. F.S.A. of the Record Office in the Tower, for having favoured him with various extracts from that repository.

In conclusion, the Editor is, perhaps, bound to notice the singular anxiety which the Crown appears always to have manifested to revive the title of L'ISLE, whenever, from the limitations of the various patents, or from attainders, it has reverted to it ; and the extraordinary, if not unparalleled, number of dignities of which the Claimant to the Barony of l'Isle is the representative, because those points were adverted to in the proceedings.

For above four hundred years the maternal ancestors of Sir John Sidney, with the exception of two short intervals, enjoyed the title of l'Isle as a title of peerage, the dignity having been uniformly revived in the person of the next heir, or of the husband of the next heir, whenever there was a failure of individuals capable of inheriting according to the limitations of the various patents ; or when the title was forfeited by attainer.



Sir John Talbot, (son and heir of Margaret, second wife of John, 1st Earl of Shrewsbury, eldest daughter and co-heir of Richard Beauchamp Earl of Warwick, by his second wife Elizabeth, daughter and sole heiress of Thomas Lord Berkeley, by Margaret his wife, daughter and sole heiress of Warine, 2nd Baron l'Isle, son of Gerard, 1st Baron l'Isle, whose mother was Alice, sister and sole heiress of Henry, 2nd Baron Tyes,) was created **BARON DE L'ISLE** by King Henry the Sixth, in 1444, to him and his heirs, lords of the manor of Kingston l'Isle, and in 1451, **VISCOUNT L'ISLE**, with remainder to his heirs male. His son Thomas, second viscount, dying without issue, Sir Edward Grey, who had married Elizabeth his sister, and eventually sole heiress, was created **BARON L'ISLE** by King Edward the Fourth, and **VISCOUNT L'ISLE** by Richard the Third. He was succeeded by his son John Grey, Viscount and Baron l'Isle, who died without issue male; and in consequence of a marriage having been contracted between his daughter and heiress Elizabeth and Sir Charles Brandon, K.G., the said Sir Charles was created **VISCOUNT L'ISLE**, to him and his heirs by his said wife; but that marriage not taking effect, the patent was cancelled. She died without issue; and very shortly afterwards, in 1523, Sir Arthur Plantagenet, K.G., the second husband of her eldest aunt and co-heiress Elizabeth, was created **VISCOUNT L'ISLE**, to him and his issue male by her. He died without issue male in 1541, when the title so created

again became extinct; and in the next year John Dudley, son and heir of the said Elizabeth by her first husband Edmund Dudley, was created VISCOUNT L'ISLE, to him and his heirs male. He was subsequently raised to the earldom of Warwick and dukedom of Northumberland, but forfeited all his honours by attainder for high treason in 1553. His eldest surviving son, Ambrose Dudley, was however created BARON L'ISLE in 1561, and Earl of Warwick, and died without issue, when both those titles became extinct. In 1605, Robert, 1st Baron Sidney, son and heir of Sir Henry Sidney, K.G. by Mary Dudley, the only sister that left issue of the said Ambrose Earl of Warwick, apparently in consequence of his being the eldest co-heir of the BARONS L'ISLE under the writ of the 31st Edw. III., and sole heir of the personages who had borne the titles of BARON and VISCOUNT L'ISLE under the various creations which have been noticed, was created VISCOUNT L'ISLE, to him and the heirs male of his body, and in 1618 was advanced to be Earl of Leicester, which titles became extinct on the death of Joceline, 7th Earl of Leicester, in 1743. Elizabeth, his niece, was eventually his sole heiress, whose grandson and heir is Sir John Shelley Sidney, Bart.

Sir John Sidney is consequently *eldest co-heir* of the ancient barony of l'Isle; and *sole heir* of the Talbots, Barons and Viscounts l'Isle; of the Greys, Viscounts and Barons l'Isle; of John Dudley, Viscount l'Isle; of Ambrose Dudley, Baron l'Isle; and

of the Sidneys, Viscounts l'Isle; and unites in his person the representation of the following dignities: ELDEST CO-HEIR of *three Baronies by Writ*, viz. BERKELEY, 25th Edw. I.; TYES, 27th Edw. I.; and DE L'ISLE, 31st Edw. III.; of the Beauchamps, Earls of Warwick, from the reign of Edward the First to that of Henry the Sixth; of the Mauduits, Earls of Warwick, in that of Henry the Third; of the Newburghs, Earls of Warwick, from the Conquest to the time of that monarch; and of the baronies of Fitz John, by writ, 49th Hen. III. and 23rd Edw. I.; and Tony, 27th Edw. I.; and SOLE HEIR of persons who, by virtue of various patents, have possessed *six Baronies*, l'Isle, 1444, l'Isle, 1475, l'Isle, 1561, Denbigh, 1563, Sidney of Penshurst, 1603, and Sidney of Milton, 1689; *five Viscountcies*, l'Isle, 1452, l'Isle, 1483, l'Isle, 1542, l'Isle, 1605, and Sidney of Shepey, 1689; *six Earldoms*, Warwick, 1547, Warwick, 1567, Leicester, 1563, Leicester, 1618, and Romney, 1694; and of the *Dukedom* of Northumberland, created in 1551: he is moreover one of the few descendants of King Henry the Seventh—A descent more splendid, and a representation of dignities more numerous, than are perhaps possessed by any other Commoner, and which fully justified the expectation of the leading counsel in the case, that the House of Lords would gladly have come to such a resolution as might have had the effect of restoring to it the heir of families so distinguished in the annals of this country. This, how-

ever, can only be done by the prerogative of the Crown; and although the exercise of that prerogative would undoubtedly be an act of favour, it would also be an act of justice: nor would it form a precedent for similar favours, for in no other instance could such claims be urged, whilst it would be gratifying to all who are sensible of those historical associations which are connected with the great and illustrious names of DE L'ISLE, GREY, TALBOT, DUDLEY, and SIDNEY, that their representative should enjoy that rank and title to which they were respectively elevated, and which, during the long period of upwards of four centuries and a half, has from time to time been so frequently revived in their descendants.

5th February, 1829.







## DESCENT OF THE BARONY OF L'ISLE.

SIR WARINE DE L'ISLE, — Alice, daughter of HENRY, 1st BARON TYES, who was summoned to ob. 1 Edw. III. 1327. Parliament from 27 Edw. I. to 1 Edw. II. Found sister and sole heir, in the 1st Edw. III., of HENRY, 2nd BARON TYES, who was summoned to Parliament from 6 to 14 Edw. II.: ob. 24 Edw. III.

GERARD DE L'ISLE, s. and h. æt. 22, 1 Edw. III. summoned to Parliament 31 Edw. III. ob. 9 June, 34 Edw. III. 1360.

WARINE DE L'ISLE, s. and h. æt. 24, summoned to Parliament from 43 Edw. III. to 6 Ric. II. ob. June, 1382.

Margaret, daughter and sole heiress, — THOMAS, 5th BARON BERKELEY æt. 22, married 47 Edw. III. by writ, summoned to Parliament from 5 Ric. II. to ob. ante 5 Henry V. 1417. 5 Hen. V. ob. 1417.

Elizabeth, daughter and sole heiress, ob. circa 1421. Richard Beauchamp, Earl of Warwick, K. G. he styled himself "Comes de Warrewyk et de Aumarle, Seigneur L'Isle," ob. April 30, 17 Hen. VI. 1439.

Margaret, eldest daughter, and co-heir to her mother, æt. 28, 17 Hen. VI. ob. 14 June, 1467. Second wife. John Talbot, 1st Earl of Shrewsbury, K. G. Eleanor, 2nd daughter and co-heir, æt. 25, 17 Hen. VI. married first, Thomas Lord Roos; and secondly, Edmund Earl of Dorset, afterwards Duke of Somerset. Elizabeth, 3rd daughter and co-heir, æt. 22, 17 Hen. VI. married George Neville, Lord Latimer.

John Talbot, son and heir apparent to his mother. Created *Baron de L'Isle* 22 Hen. VI. 1444. Created *Viscount L'Isle* 30 Hen. VI. 1451, slain *vita matris* July 30, 1453.

*A quo* Sir Henry Hunloke, Bart., George Earl of Essex, and Charlotte Baroness de Roos, co-HEIRS, 1824.

*A quo* Hugh Duke of Northumberland, Winchcombe Howard Hartley, Esq., James Knightley, Esq., Miss Grove, Villiers William Villiers, Esq., Montagu Earl of Abingdon, Sir Francis Burdett, Bart., William Fermor, Esq., and John Lord Rollo, co-HEIRS, 1824.

Thomas Talbot, Baron and Viscount L'Isle. Slain 20 March, 10 Edw. IV. 1470, s. p.

Elizabeth, eldest sister and co-heir, æt. 18, 10 Edw. IV.

Sir Edward Grey. Created *Baron de L'Isle* 15 Edw. IV. 1475, and *Viscount L'Isle* 1 Ric. III. 1483, ob. 27 July, 1492.

Margaret, æt. 16, 10 Edw. IV. married Sir George Vere, Knt. and died before 1475, s. p.

John Grey, Viscount and Baron L'Isle, æt. 11, 1492, ob. 6 Sept. 1504, when the Viscounty became extinct.

Edmund Dudley, Esq. 1st husband.

Elizabeth, aunt, and eventually sole heir of Elizabeth, Viscountess L'Isle.

Sir Arthur Plantagenet, K. G. created Viscount L'Isle 1523, ob. 1541, s. p. x. when the Viscounty became extinct. 2nd husband.

Other daughters, ob. s. p.

Elizabeth, daughter and heir, æt. 2 months, 1504, contracted to Sir Charles Brandon, K. G. who was therefore created *l'iscount L'Isle* May 15, 1513; which patent was cancelled in 1523. She died before 1523, s. p.

John Dudley, s. and h. created *Viscount L'Isle* 1542, Earl of Warwick 1547, and Duke of Northumberland, 1551, K. G. beheaded and attainted 1553.





## BARONY OF L'ISLE.

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STATEMENT OF THE CASE. GERARD DE L'ISLE, the son and heir of Warine de l'Isle<sup>1</sup>, by Alice, daughter of Henry Baron Tyes, and sister and sole heiress of Henry Baron Tyes<sup>2</sup>, was summoned as a baron of the realm by

<sup>1</sup> *Esch.* 1 Edw. III. No. 15.

<sup>2</sup> *Esch.* 1 Edw. III. No. 54, and 24 Edw. III. No. 95. Although it formed no part of the Case, the descent of Gerard de l'Isle, from the family of Tyes, is a very important feature in it; as it is not improbable that the barony, vested in the house of l'Isle, originated in the writs of summons to Henry de Tyes, who was regularly summoned to parliament from the 27th Edw. I. to the 1st Edw. II., and was present in the parliament at Lincoln in the 29th Edw. I., when he was a party to the Letter from the Barons to Pope Boniface VIII., to which instrument his seal is still attached. He died in 1308, leaving Henry his son and heir of full age, who was regularly summoned to parliament from the 6th to the 14th Edw. II., in which year he was beheaded and attainted for his adherence to the Earl of Lancaster. In the 1st Edw. III. the proceedings against the earl and his followers were reversed; and Alice, the sister and heir of Henry the last Lord Tyes, obtained restitution of her brother's lands. She died in the 24th Edw. III., and four years afterwards, namely, in the 28th Edw. III., her son was a party to an instrument which almost places it beyond a doubt that he was then a peer of the realm, (*see* p. 3,) and in the 31st Edw. III. he was summoned to parliament. The presumption that Gerard de l'Isle became a peer, *jure matris*, arises from the following facts:

1st. That neither his father nor grandfather was ever summoned to parliament.

2nd. That there is not the slightest proof that he enjoyed the baronial dignity until after his mother's death.

3rd. That he possessed that rank within four years, and was summoned to parliament within seven years, after her decease.

4th. That numerous instances exist in which the husbands or sons of the heiresses of barons were summoned to parliament in the fourteenth century.

Two arguments might be adduced to prove that Gerard de l'Isle was not summoned *jure matris*: the one, that he was not summoned as "Lord Tyes;" the other, that his father was not, according to the custom of the age, summoned *jure uxoris*. To the first of these objections it is a sufficient answer, that no instance is known of any title being attributed to barons in writs of summons at the period in question, they being always described by their family names, excepting when it was

writ tested on the 15th December, 31 Edw. III. 1357, by the appellation of "Gerardus de Insula," to attend the parliament which was appointed to meet at Westminster, on Monday next after the Feast of the Purification, *i. e.* on the 5th February, 1358<sup>1</sup>. By writs tested on the 20th June, 32 Edw. III. 1358, six bishops, six abbots, two priors, the dean of Wells, seven earls, about thirty barons, among whom was Gerard de l'Isle, the judges, and several other persons who were not peers, were commanded to attend at Westminster, on Sunday next after the Feast of St. Margaret the Virgin, *i. e.* on the 22nd July, 1358, "colloquium habere et tractatum"—"cum prelati, ac magnatibus et proceribus predictis tractaturi, vestrumque consilium impensuri," the usual words in writs to parliament.<sup>2</sup> Gerard de l'Isle was found heir to his mother in the 24th Edw. III., at which time he was aged forty and upwards<sup>3</sup>. In September, 33 Edw. III. 1359, he received letters of protection, being then in the king's service<sup>4</sup>; and died on the 9th June, 34 Edw. III. 1360<sup>5</sup>.

No notice of any parliament occurs on the Rolls of Parlia-

necessary to distinguish two individuals, of the same baptismal and surnames, from each other, by the addition of the name of their chief territorial possession; and to the second, that from the death of Henry Lord Tyes in the 14th Edw. II. until the 1st Edw. III., his lands and dignity were forfeited; and that Warine de l'Isle, the husband of Alice his sister and heiress, died in the same year, and on the same occasion, as his brother-in-law Lord Tyes. In September, 24 Edw. III., in which year Gerard de l'Isle succeeded his mother, he performed a pilgrimage to Rome, which may account for no notice being found of him for some time afterwards. — *Fædera*, tome v. p. 682. The Lords' Committee in their *Third Report* on the Dignity of a Peer of the Realm, observe, "It is more probable that Gerard de l'Isle was summoned to parliament as heir of the family of Tyes, which had been before summoned for two generations, than that he was summoned in respect of the manor of Kingston l'Isle."—p. 195.

<sup>1</sup> *Rot. Claus.* 31 Edw. III. in dorso, m. 2.

<sup>2</sup> *Rot. Claus.* 32 Edw. III. in dorso, m. 14. This writ is not noticed in the proceedings before the House.

<sup>3</sup> *Esch.* 24 Edw. III. No. 95.

<sup>4</sup> *Rot. Franc.* 33 Edw. III. pt. 2, m. 9.

<sup>5</sup> *Esch.* 34 Edw. III. No. 53.

ment, or in the Statutes of the Realm after April, 31 Edw. III. 1357, until January, 34 Edw. III. 1361; nor are there any writs extant until after the death of Gerard de l'Isle, excepting two; the one tested on the 10th October, 33 Edw. III. 1359, in which year he was in the wars in France, commanding four earls and nineteen lay persons, some of whom were neither peers nor judges, to attend a Council during the king's absence<sup>1</sup>; and the other, tested 3rd April, 34 Edw. III. 1360, ordering the prelates, earls, and twenty barons named, to attend a parliament at Westminster, on the Morrow of the Ascension, *i. e.* 15th May following<sup>2</sup>, but which parliament does not appear to have met<sup>3</sup>. It may be inferred, therefore, that Gerard de l'Isle was only once summoned to, and it is not likely that he ever sat in, parliament after the issue of the writ of the 31st Edw. III.; but there is very strong presumptive evidence that he sat as a peer in the parliament of the 28th Edw. III., though that circumstance was not alluded to in the proceedings<sup>4</sup>. Parliamentary writs were only once issued after the 31st Edw. III.

<sup>1</sup> *Rot. Claus.* 33 Edw. III. in dorso, m. 10.

<sup>2</sup> *Rot. Claus.* 34 Edw. III. in dorso, m. 35.

<sup>3</sup> No notice of a parliament being held on the morrow of the Ascension in the 34th Edw. III. is to be found on the *Rolls of Parliament*, or in the *Statutes of the Realm*.

<sup>4</sup> Pursuant to writs tested at Westminster, 15th March, 28 Edw. III. 1354, addressed to the prelates and abbots, to the prince of Wales, the duke of Lancaster, eleven earls, and forty-eight barons, (*Rot. Claus. eod. ann.*) a parliament met at Westminster, on Monday after the Feast of St. Mark, *i. e.* 28th April next following, when the chancellor stated, that one cause of the summons was with a view to the termination of the war with France; and the last entry on the roll of that parliament is, that Robert de Burghersh, the king's chamberlain, informed the "Grantz et Communes" there present, that a treaty had taken place on the subject, and that hopes were entertained of a successful result, "quel issue nostre Seigneur le Roi ne voet prendre sanz assent des Grantz et de ses Communes. Par quoi le dit Chaumberleyn enquist et demanda, de par nostre dit Seigneur le Roi, des ditz Grantz et Communes, s'ils vorroient assentir et accorder a la Pees, en cas que homme purroit attendre de la avoir par Trettee et acord des parties. A quoi les dites Communes d'un assent et d'un acord responderent: Que quel issue qe pluist a notre dit Seigneur le Roi et a les Grantz de prendre du dite Trettee feust greable a eux. Sur queu respons dist le Chaumberleyn a les dites Communes: Donques vous voillez assentir au

until his demise, but as he was undoubtedly in the king's service abroad a few months before the date of those writs,

Tretee du Pees perpetuele, si homme la puist avoir. Et les dites Communes responderent entierement et uniement, Oil, Oil. Sur quoi feust commande par Mestre Michel de Northburgh, gardeyn du Prive Seal nostre Seigneur le Roi a Sire Johan de Swynleye Notair Papal, q'il ent ferroit instrument public."—*Rot. Parl.* vol. ii. pp. 254. 262. On the 28th of August following, the spiritual and temporal peers by separate instruments, dated at *Westminster* on that day, solemnly appointed five persons as their proxies to consent on their parts to the arbitration of the pontiff in the dispute between the English and French monarchs. These documents are printed in the *Fœdera*, tome v. pp. 797, 798, from the originals in the Tower, but which cannot now be found. The instrument of the temporal peers evidently includes the greater part of the Baronage of the time; and there can be little doubt that every person named in it was a baron of the realm, even, which the preceding extract from the Rolls of Parliament, and the date and place where the instruments were executed render highly probable, if they were not then all sitting as peers of parliament. There are altogether eighty-eight names; of which one was the Prince of Wales, two, the younger sons of the King, namely, Lionel Earl of Ulster, who was then about sixteen, and his brother John Earl of Richmond, who was then fourteen, the Duke of Lancaster, eleven earls, and sixty-nine who are described as "dominus" of some territory in England. The four to whom that designation is not applied were, however, undoubtedly barons of the realm, having been summoned either to that or to previous parliaments. Of the whole body, the Prince of Wales, the Duke of Lancaster, ten earls, and forty-three barons, were expressly summoned to that parliament; thirteen of the remainder had been summoned to previous, and some also to subsequent parliaments; ten were summoned to subsequent parliaments; and eight only are not recorded to have been ever summoned, of which eight were—Lord Ferrers of Chartley, whose ancestors and descendants were summoned; Miles de Stapleton, whose father and grandfather were summoned; and Nicholas de Poyntz, whose father, grandfather, and great grandfather, were summoned: the others were John Talbot of Castle Richard, Miles de Stapleton of Hathesey, Hugh de Menill, and Robert Bertram, who were persons of great landed property, and whose ancestors had been either summoned, or were barons by tenure, and Robert de Herle, Lord of Kirby, who was Admiral of the King's Fleet in the 35th Edw. III., and was a person of considerable consequence. Among these names the sixtieth is *Gerardus de Insula, Dominus de Stowe*, and which seems to establish that he then ranked and acted as a peer of the realm, and that *Stowe*, and not *Kingston l'Isle*, was considered his most important lordship.

It is material to add, that three barons, viz. Edward le Despenser, Roger de Clifford, and John de Welles, whom we find parties to this document, whose ancestors had been summoned for several generations, were summoned for the first time in the 31st Edward III., when Gerard de l'Isle was summoned; and that the presumption that the persons named in it were sitting as peers of parliament, is not negatived by the fact, that many of them were not summoned to that parliament, that others were not summoned until many years afterwards, and that a few are not



it is probable that the omission of his name therein arose from his being out of the kingdom; and it is certain that not half the barons were included in the writs alluded to<sup>1</sup>. By an inquisition<sup>2</sup> held at Kingston l'Isle on the 28th June, 34 Edw. III. 1360, it was found that he died seized, *inter alia*, of the manor of Kingston l'Isle in the county of Berks, which he held of Robert de l'Isle of Rougemont, by the service of one knight's fee and a pair of gold spurs, or sixpence per annum; that he died on the 9th of June preceding; and that his son,

WARINE DE L'ISLE, 2nd Baron. WARINE DE L'ISLE was his next heir, and then of the age of twenty-four years and upwards, at which time, according to Dugdale, he was in the wars in France<sup>3</sup>. He was summoned to parliament by writ tested 6th April, 43 Edw. III. 1369; and again in the 44th, 46th, 47th; twice in the 49th Edw. III.; in the 1st; twice in the 2nd; in the 3rd, 4th; and thrice in the 5th Ric. II.<sup>4</sup>; and died on the 28th June, 6 Ric. II. 1382. He was included in every writ to parliament between the 43rd

recorded to have been ever summoned, since not only are similar anomalies to be found in the Letter from the Barons to the Pope in the 29th Edw. I., to which in some points this instrument bears a resemblance, but the *Rolls of Parliament* afford numerous instances of persons sitting as peers who were not summoned for many years after, as well as of some who were never summoned. The *Rolls of Parliament*, of the 13th Edw. III., present another example of Peers in Parliament sending letters under their seals: vol. ii. p. 105.

<sup>1</sup> By the writ of the 31st Edw. III., when Gerard de l'Isle was first summoned, *fifty-one* barons were summoned: and the following are the numbers in the seven writs preceding, and in the seven next ensuing, that of the 31st Edw. III. Anno 24 Edw. III. *fifty*; An. 25, *fifty-two*; An. 26, *twenty-four*; An. 27, *forty-three*; An. 28, *forty-eight*; An. 29, *forty-one*; An. 32, *twenty-three*; An. 33, *eighteen*; An. 34, *forty-four*; An. 36, *twenty-nine*; An. 37, *forty*; An. 38, *forty*; An. 39, *forty-one*.

<sup>2</sup> Esch. 34 Edw. III. No. 53.

<sup>3</sup> *Baronage*, tome i. p. 738, on the authority of the *Rot. Vascon*, 33 Edw. III. m. 16; but Sir William Dugdale's statement is not borne out by the original.

<sup>4</sup> *Clause Rolls* of the respective years.

Edw. III. and 6th Ric. II., excepting the writ tested the 1st September, 46 Edw. III. 1372, and the one tested the 1st December, 50 Edw. III. 1376<sup>1</sup>. By the writ of the 1st September, 46 Edw. III. only seventeen barons were summoned, who were to meet at Westminster in the quindome of St. Michael next following, the king being then out of the realm; but that parliament never assembled, and he was included in the next writ, tested on the 1st October in the same year, which states that he had been summoned to the parliament that was ordered to meet in the quindome of St. Michael; but which, by the writ then issued to De l'Isle and the other peers, was prorogued to the Morrow of All Souls next ensuing<sup>1</sup>. In the 46th Edw. III. however, he was in the wars of France; for by indentures dated in that year, he was engaged to serve there for one year, with twenty men-at-arms and thirty archers<sup>2</sup>. By the writ of the 50th Edw. III. thirty-six barons<sup>1</sup> were summoned, and the parliament met accordingly<sup>3</sup>; and, unless Warine de l'Isle was engaged in the king's service elsewhere, it is difficult to explain why his name does not occur in that summons.

He received altogether fourteen writs of summons to parliament, and eleven of those parliaments actually met; but no positive evidence is to be found on the rolls of parliament, that he was present upon either occasion. As the place in which the name of Warine de l'Isle and of his father occur in the writs of summons was more than once alluded to during the proceedings before the House of Lords, it is necessary to observe, that Gerard de l'Isle is the 14th of the fifty barons summoned by the writ of the 31st Edw. III.; and that Warine de l'Isle is the 25th of the thirty-five barons in

<sup>1</sup> *Clause Rolls* of the respective years.

<sup>2</sup> Cited by Collins, in his *Collection of the Sydney Papers*, from the original, which was in the possession of the Earl of Elgin in 1659.

<sup>3</sup> *Rolls of Parliament*, 50 Edw. III. vol. ii.

the writ of the 43d Edw. III.; the 39th of the fifty-one, in the writ of the 44th Edw. III.; the 11th of the seventeen in the writ of the 6th October, 46 Edw. III.; the 9th of the thirty-three in the writ of the 47 Edw. III.; the 11th of the thirty-eight in the writ of the 28th December, and the 11th of the forty in that of the 20th January, 49 Edw. III.; the 44th of the forty-seven in the writs of 1st Ric. II., and 3d September, 2 Ric. II.; the 21st of the forty-seven in the writs of 26th February, 2 Ric. II., and 3 Ric. II.; the 14th of the thirty-six in the writs of the 4 Ric. II.; the 15th of the forty-seven in the writs of July and August, 5 Ric. II.; and the 15th of the forty-four in the writ of the 24th March, 5 Ric. II.<sup>1</sup> It is also material to remark that between June, 34 Edw. III., when he succeeded his father, and the 43rd Edw. III., when the first writ was addressed to him, not more than six writs to parliament were issued; and that upon two of these occasions thirty barons only were summoned. By an inquisition held at Walyngford, on the 18th July, 6 Ric. II., 1382, it was found that Warine de l'Isle died on the 28th of June preceding, and that Margaret, the wife of Thomas de Berkeley, Chevalier, was his daughter and next heir<sup>2</sup>, and of the age of twenty-two years and upwards<sup>3</sup>.

MARGARET LADY      ON the marriage of the said Margaret with  
BERKELEY.      Thomas Lord Berkeley in the 47th Edw.

<sup>1</sup> *Clause Rolls* of the respective years.

<sup>2</sup> She had a brother, Gerard de l'Isle, who, by agreement dated in the 47th Edw. III., was to marry Ann, daughter of Sir Michael de la Pole, Knight, with whom he was to have a portion of £933 6s. 8d. (*Clause Rolls*, eod. ann.) Gerard de l'Isle was fifteen years of age and heir to his mother in the 49th Edw. III. (*Esch.* eod. ann. Nos. 67. 73.) and was knighted at the coronation of Richard II. (*Faxlera*, vol. vii. p. 160.) In the 1st Ric. II. his father and himself were in the retinue of the Earl of Arundel, (*Rot. Franc.* 1 Ric. II. p. i. m. 22. 24.) and in January, 3 Ric. II. being a prisoner, money was sent for his ransom. (*Ibid.* 3 Ric. II. m. 15.) He died *in vita patris* before 6 Ric. II. s. p.

<sup>3</sup> *Esch.* 6 Ric. II. No. 47.

III., it was covenanted that he and his issue by her should bear the arms of l'Isle<sup>1</sup>. She died in the lifetime of her husband, Lord Berkeley, upon whose death, on the 13th of July, 5 Hen. V. 1417, it was found that he held, in right of Margaret late his wife, deceased, *de hereditate*, Elizabeth, wife of Richard Earl of Warwick, who was then living, the daughter of the said Thomas de Berkeley and Margaret, and her heir, the manor of Kingston l'Isle and others; and that the said Elizabeth was his daughter and heir, and then of the age of thirty and upwards<sup>2</sup>.

ELIZABETH, COUN-  
TESS OF WARWICK.

ELIZABETH, Countess of Warwick, died in the lifetime of her husband, Richard Beauchamp, Earl of Warwick, who styled himself in his charters, "Ric: de Beauchamp, Comes de Warrewyk et de Aumarle, *Seigneur l'Isle*, et Capitayne de Rouen<sup>3</sup>," leaving her three daughters her co-heiresses, namely, Margaret, who married John Talbot, Earl of Shrewsbury, to whom she was second wife; Eleanor, who married first, Thomas Lord Roos, who died 18th August, 1431, and secondly, Edmund Earl of Dorset, afterwards Duke of Somerset; and Elizabeth, who married George Neville, Lord Latimer. Upon the death of their father, the Earl of Warwick, on the 30th April, 17 Hen. VI. 1439, Margaret was twenty-eight, Eleanor twenty-five, and Elizabeth twenty-two years of age<sup>4</sup>. Of the two youngest co-heirs of the Countess of Warwick it is only necessary to observe, that the representatives of Eleanor Lady Roos were Sir Henry Hunloke, Bart., George Earl of Essex, and Charlotte Baroness de Roos; and of Eli-

<sup>1</sup> Cited by Collins in the *Sydney Papers* from the original at Berkeley Castle.

<sup>2</sup> *Eck. 5 Henry V.*

<sup>3</sup> *Dugdale's Antiquities of Warwickshire*, p. 329. Ex autog. penes Tho. Shirley Armig.

<sup>4</sup> *Eck. 17 Henry VI.*



zabeth Lady Latimer, Hugh Duke of Northumberland, Whichcombe Henry Howard Hartley, Esq., James Knightley, Esq.; Troth Grove; Villiers William Villiers, Esq., Montague Earl of Abingdon, Sir Francis Burdett, Bart., William Fermor, Esq., and John Lord Rollo<sup>1</sup>.

MARGARET COUN- MARGARET Countess of Shrewsbury, the  
TESS OF SHREWSBURY. eldest co-heir, died on the 14th June, 1467<sup>2</sup>,  
and was buried in Jesus Chapel, in St. Paul's Cathedral<sup>3</sup>.  
She had issue

JOHN TALBOT, 1st JOHN TALBOT, her son and heir apparent,  
Viscount and who, on the 26th July, 22 Hen. VI. 1444,  
Baron l'Isle. was created Baron de l'Isle, to him and his  
heirs and assigns for ever, being lords of the manor and  
lordship of Kingston l'Isle. A copy of that charter will be  
found in a subsequent page; and therefore in this place an  
abstract only of its contents will be given. It commences by  
reciting that Warine late lord of l'Isle, deceased, died seized,  
*inter alia*, of the lordship and manor of Kingston l'Isle, with  
its appurtenances, in the county of Berks; that he had issue

<sup>1</sup> Appendix to the Printed Case.

<sup>2</sup> *Esch.* 7 Edw. IV.

<sup>3</sup> Dugdale's *History of St. Paul's*, by Ellis, p. 84. whence the following Inscription is copied, because it will be alluded to hereafter. It would appear that it was erected about the year 1492, as Sir Humphrey Talbot, her younger son, ordered by his will, dated in February in that year, "that there be a stone put on the Pyller byfore the grave of my lady my moder, in Powlis, of her portraiture, and of her armes, according to the wille of John Wenlock."—*Ibid.* p. 76.

"Heer, before the Image of Jhesu, lyeth the worshipful and right noble Lady Margarete, Countess of Shrousbury, late wife of the true and victorious Knight and redowted Werrior, John Talbot, Erle of Shrousbury, which died in Gien for the right of this lond: the first doughter and one of the heires of the right famous renowned Knyght, Richard Beauchamp, late Erle of Warwick, which died in Roan; and of Dame Elyzabeth his wyf: *the which Elyzabeth was doughter and heyre to Thomas late Lord Berkeley on his side; and on her moders side Lady Lisle and Tyes.* Which Countes passed fro this world the xiiij day of Juyn, the yere of our Lord MCCCCLXVII. On whose soule Jhesu have mercy. Amen."

Margaret, who married Thomas Lord Berkeley, and who, after her father's decease, inherited the manor as his heir; that they had issue, Elizabeth, who married Richard, late Earl of Warwick, and who likewise inherited the manor; that they left issue, Margaret, Eleanor and Elizabeth; that the said Margaret married John Talbot, Earl of Shrewsbury, and had issue, Sir John Talbot, Knight; and that they had granted the said manor to their son, the said Sir John Talbot, and his heirs. The King considering the premises, and also that the said Warine de l'Isle, and all his ancestors, by reason of the possession of the said lordship and manor, had borne the name and dignity of "*Baronis et Dñi de Lisle*," from time beyond the memory of man, and that he and all his successors from the same time, by the said name, had had places, seats, and other pre-eminencies in parliament and the royal councils, as the rest of the barons of the kingdom of England had had, his majesty was pleased to grant that the said John Talbot, and his heirs, *lords of the said lordship and manor of Kingston l'Isle*, should be Lords and Barons of l'Isle, and barons and peers of the kingdom, with seats in parliament and councils.

The most important allegations in this patent have been proved to be false, for neither Warine de l'Isle nor his immediate ancestors were peers of the realm by the tenure of that manor, which was not held by them *in capite* of the Crown, but of Robert de Insula, by knight's service: nor was ever the paternal grandfather or great grandfather of Warine de l'Isle a baron; nor was Sir John Talbot seized of the manor of Kingston l'Isle at the time of his creation, nor did he ever possess it. It is also material to state that as Sir John Talbot died before his mother he never was one of the coheirs of Warine, the last Lord l'Isle. By charter, tested 30th October, 30 Hen. VI. 1451, John Talbot, Baron l'Isle, was advanced to the dignity of Viscount l'Isle, with precedence im-

mediately after Henry Viscount Bouchier, and above all barons, to hold to him and the heirs male of his body. He fell in battle on the 30th July, 31 Hen. VI. 1453<sup>1</sup>, leaving

THOMAS TALBOT, 2nd Viscount l'Isle. THOMAS TALBOT, his son and heir, who succeeded him in his honours. He became the eldest coheir of the barony of l'Isle, on the death of his grandmother, the Countess of Shrewsbury, 14 June, 1467, and died without issue, being killed in a quarrel with Lord Berkeley, 20 March, 10 Edw. IV. 1470, leaving his two sisters, Elizabeth then aged eighteen and upwards, and Margaret, then aged sixteen and upwards, his next heirs. Upon his death, the Viscounty of l'Isle became extinct. Margaret Talbot, his youngest sister, married Sir George Vere, Knt., and died without issue before the 15th Edw. IV. 1475; but the eldest sister,

EDWARD GREY, Baron and Viscount l'Isle. ELIZABETH TALBOT married Sir Edward Grey, Knt., who by patent, tested 14th March, 15 Edw. IV. 1475, was created Baron of l'Isle, to him and the heirs of his body, by the said Elizabeth, being lords of the manor of Kingston l'Isle, in the same manner as Warine de l'Isle would enjoy the same if he were then living, or as any person Baron de l'Isle before that time had enjoyed it. That patent, which will be found in a subsequent page, recites the same statement about Warine de l'Isle and his ancestors having been Barons of l'Isle by tenure of the manor of Kingston l'Isle as occurs in the charter to Sir John Talbot in the 22nd Hen. VI.: it states the descent of Thomas Talbot, Viscount Baron l'Isle,

<sup>1</sup> Esch. 10 Edw. IV. He had another sister, Eleanor, who is not noticed in the case. She married Sir Thomas Botiller, Knt., son and heir apparent of Ralph Lord Sudley; and having survived her husband, who died *in vita patris* before the 39th Hen. VI., died on the 30th June, 1468, without issue, leaving her brother, Thomas Viscount l'Isle, her heir. Esch. 8 Edw. IV. No. 39.

and of his sisters, and observes, that Margaret married Sir George Vere, Knt.; that upon the death of the said Thomas Viscount l'Isle, the manor of Kingston l'Isle descended to his sisters; that Margaret Lady Vere had died without issue; that the said Edward Grey and Elizabeth his wife were then seized of that manor, and that they had issue John and others. Edward Grey Baron de l'Isle was created Viscount l'Isle, to hold to him and the heirs male of his body, by patent, tested 28th June, 1 Ric. III. 1483, and died on the 27th July, 7 Hen. VII. 1492, being then seized of the manor of Kingston l'Isle, leaving, by Elizabeth Talbot,

JOHN GREY, Baron JOHN GREY, Viscount and Baron l'Isle,  
and Viscount l'Isle. his son, his next heir, who was then of the age of eleven years and upwards. He died on the 6th Sept. 20 Hen. VII. 1504, seized of the manor of Kingston l'Isle, leaving his daughter, Elizabeth, of the age of eight weeks, his heir. She was contracted to Sir Charles Brandon, K.G., afterwards Duke of Suffolk, who was created Viscount l'Isle, by patent, 15th May, 5 Hen. VIII. 1513, to him and the heirs male of his body; by the said Elizabeth, " then Viscountess l'Isle," but that marriage, not taking effect, and she being dead without issue<sup>1</sup>, the patent to Sir Charles Brandon was cancelled in the 15th Hen. VIII. 1523<sup>2</sup>. On the 25th of April in that year

ARTHUR PLANTAGE- SIR ARTHUR PLANTAGENET, Knight, was  
NET, Viscount l'Isle. created Viscount l'Isle, to hold to him and  
" the heirs male of his wife, Elizabeth, the sister and heir of

<sup>1</sup> Dugdale says, she afterwards married Henry Courtenay, Earl of Devon; but from the words of the patent of the 15th Hen. VIII. to Sir Arthur Plantagenet, in which the grant to Sir Charles Brandon is recited, and where the facts, that his marriage with the Viscountess had not taken place, and that she was then dead without issue, are stated, this does not appear to have been the case.

<sup>2</sup> A copy of this patent will be found in the APPENDIX.



John Grey, late Viscount l'Isle<sup>1</sup>." Arthur Plantagenet was her second husband, and by him, who died in 1541, she had daughters only; but by her first husband, Edmond Dudley, she left issue, her son and heir,

JOHN DUDLEY, JOHN DUDLEY, who was created Viscount Viscount l'Isle, &c. l'Isle, to him and the heirs male of his body, by patent, 12th March, 33 Hen. VIII. 1542. In 1547, he was created Earl of Warwick, and in 1551, Duke of Northumberland; but having been convicted of high treason, he was executed, and attainted by Stat. 1st Mary. In the 4th & 5th Philip & Mary, his children, Sir Ambrose Dudley and Sir Robert Dudley, Knights, Mary, wife of Sir Henry Sidney, Knight, and Katharine, wife of Henry Lord Hastings, were restored in blood. By patent, 25th December, 4 Eliz. 1561, the said

AMBROSE DUDLEY, SIR AMBROSE DUDLEY was created Baron Baron l'Isle, &c. l'Isle, to him and his issue male; and on the next day was elevated to the earldom of Warwick, with a similar remainder, and in default of his issue male, to his brother, Sir Robert Dudley, and the heirs male of his body, which honours became extinct on his death, on the 21st February, 1589, when his sister, Katharine, then Countess of Huntingdon, and his kinswoman, Elizabeth Sydney, daughter and heir of Sir Philip Sydney, son and heir of Mary Sydney, late wife of Sir Henry Sydney, Knight, were found to be his heirs. The Countess of Huntingdon died without issue, 2nd May, 1620, and the said Elizabeth Sydney, having married Roger Earl of Rutland, died issueless on the 1st of September, 10 James I. 1612, leaving her uncle,

<sup>1</sup> John Viscount l'Isle had two other sisters: Ann, who married Sir John Willoughby, and died s. p. before 1549; and Margaret, who married first, Edward Earl of Wiltshire, and secondly, Henry Earl of Wiltshire, but died s. p. before 1523.—*Appendix to the Printed Case.*

**ROBERT SYDNEY, Viscount l'Isle, and Viscount l'Isle, &c.** **Baron Sydney, of Penshurst, her next heir, 1st Earl of Leicester.** namely, son of Sir Henry Sydney, K. G. father of Sir Philip Sydney, Knt., father of the said Elizabeth Countess of Rutland. He was created Baron Sydney, of Penshurst, by patent, 13th May, 1603, and Viscount l'Isle, 4th May, 1605, with remainder of both honours to the heirs male of his body, and on the 2nd August, 1618, was raised to the dignity of Earl of Leicester. On the death of his aunt, the Countess of Huntingdon, in 1620, he became the eldest co-heir of Warine Lord l'Isle, and died on the 13th July, 1626. He was succeeded by his eldest surviving son and heir,

**ROBERT SYDNEY, 2nd Earl of Leicester, &c.** **ROBERT, second Baron Sydney, Viscount l'Isle, and Earl of Leicester, who died 2nd November, 1677, leaving his eldest son and heir,**

**PHILIP SYDNEY, 3rd Earl of Leicester.** **PHILIP, third Baron Sydney, Viscount l'Isle, and Earl of Leicester, who died 16th March, 1697-8, leaving**

**ROBERT SYDNEY, 4th Earl of Leicester, &c.** **ROBERT, his eldest surviving son and heir, fourth Baron Sydney, Viscount l'Isle, and Earl of Leicester. He had issue, 1. Robert, who died an infant; 2. Philip; 3. John; 4. Thomas; and 5. Joscelyn; and died 10th November, 1702, being succeeded in his honours by his eldest son and heir,**

**PHILIP SYDNEY, 5th Earl of Leicester, &c.** **PHILIP, fifth Baron Sydney, Viscount l'Isle, and Earl of Leicester, who dying without issue on the 24th July, 1705, was succeeded by his next brother and heir,**

JOHN SYDNEY,  
6th Earl of Leices-  
ter, &c.

JOHN, sixth Baron Sydney, Viscount l'Isle, and Earl of Leicester, who also died without issue on the 27th September, 1737, when these titles devolved (his next brother, Thomas Sydney, having died on the 27th January, 1728-9, leaving only two daughters, Mary and Elizabeth,) on his youngest brother and heir male,

JOSCELYN SYDNEY,  
7th Earl of Leices-  
ter, &c.

JOSCELYN, seventh and last Baron Sydney, Viscount l'Isle, and Earl of Leicester, who died without legitimate issue, on the 6th July, 1743, when these honours became extinct. His heirs were his nieces,

LADY SHERARD,  
and MRS. PERRY,  
co-heirs of the last  
Earl of Leicester.

MARY, the wife of Sir Brownlow Sherard, Bart., and Elizabeth, the wife of William Perry, of Turville Park, in the county Bucks, Esq. the daughters and co-heiresses of Thomas Sydney, fourth son of Robert, fourth Earl of Leicester. Mary Lady Sherard died in 1758, without issue, and her sister and heiress, Elizabeth, wife of William Perry, Esq., died in 1783, having had six children, all of whom died without issue before October, 1768, excepting

MRS. SHELLEY,  
sole heir of the Earls  
of Leicester, &c.

ELIZABETH JANE, who was baptized 3rd February, 1741, married December, 1769, Bysshe Shelley, Esq., afterwards Sir Bysshe Shelley, Bart., (to whom she was second wife,) and died in May, 1781, leaving

THE CLAIMANT. SIR JOHN SHELLEY SIDNEY, Bart., her eldest son and heir, who, as the heir general and represen-

~~the said~~ ~~petitioner~~ ~~representative~~ of Margaret, Countess of Shrewsbury, presented a petition to His Majesty in 1823, reciting his descent from Gerard de l'Isle, and the various patents which had been granted to his descendants; and concluded by stating that he the petitioner was sole heir of the body of Margaret, the eldest daughter and one of the co-heiresses of the said Elizabeth Countess of Warwick, only daughter and heiress of the said Margaret, the wife of the said Thomas de Berkeley, which said Margaret was the only daughter and heiress of the said Warine de l'Isle, summoned to parliament by writ as aforesaid; "that there were heirs of the respective bodies of the said Eleanor and Elizabeth, the other daughters of the said Elizabeth Countess of Warwick, then subsisting, and that the grace of the Crown not having been exercised to terminate the abeyance of the said barony, which took place upon the decease of the said Elizabeth Countess of Warwick, the same remained in suspense and at His Majesty's disposal; and in regard that the petitioner was the sole heir of the said Margaret, the eldest daughter of the said Elizabeth Countess of Warwick, and that the name and dignity of L'Isle hath been by His Majesty's royal predecessors so often renewed, in and for so many ages enjoyed by the petitioner's ancestors in manner before mentioned, the petitioner prayed that His Majesty would be graciously pleased to terminate the abeyance of the said barony in his favour, by a writ of summons to be issued to him," or in such other manner as to His Majesty's royal wisdom should seem meet.

Reference. The King was pleased to refer this petition to the Attorney General, Sir Robert Gifford, who, having received evidence in support of the allegations contained in it, made his Report on the 1st of January, 1824.



Attorney-General's THE ATTORNEY-GENERAL, after reciting  
Report.

the petition and the evidence which had been adduced in support of it, and observing that " the evidence contained in the charter to John Talbot in the 22nd Henry VI., wherein Warine de Insula is called ' Warinus nuper Dominus de l'Isle,' and where he and his ancestors are said beyond the memory of man, by the name of Lords l'Isle ' loca et sessiones, et alias pre-eminencias in Parliamentis et Consiliis Regiis, ut ceteri Barones regni Angliæ, a toto tempore predicto habuerunt et obtinuerunt,' together with the frequent summonses directed to Warine de Insula, appeared to him to prove that in point of fact Warine de Insula did sit in parliament in pursuance of those summonses," and noticing the omission of his name in the writ of summons of the 50th Edw. III., proceeds thus :

" Upon consideration of the proofs above detailed, it appears to me, that there is satisfactory evidence to show that the petitioner is heir of the body of Margaret Countess of Shrewsbury, the eldest daughter and co-heiress of Elizabeth Countess of Warwick, who was the only daughter and heiress of Margaret, daughter and heir of Warine de l'Isle. It was then submitted to me, on behalf of the petitioner, that the evidence adduced by him established that Warinus de Insula had been summoned to parliament as a baron by writ, and had sat in pursuance of such summons ; and that by reason of such summons and sitting, the dignity of a baron was acquired by him, descendible to the heirs of his body ; and that upon the death of Elizabeth Countess of Warwick, his granddaughter, leaving three daughters, (all of whom have left descendants,) the dignity fell into abeyance, and has ever since so continued ; and that your Majesty may, if it shall so please your Majesty, determine that abeyance by granting a writ of summons to any of the co-heirs of the said Warinus de Insula.

“ Whether, however, a writ of summons to parliament at this remote period, and a sitting thereon by virtue merely of such summons, ennobled the party summoned, and created a descendible dignity, is a point upon which doubts may be entertained, and indeed have been expressed in the Third Report of the Committee of the House of Lords, appointed to inquire touching the Dignity of a Peer of the Realm (pp. 21. 23, and the subsequent pages).

“ But in this case there is important evidence to show that Warinus de Insula was summoned to parliament, and sat there by reason of his seisin of the manor of Kingston l'Isle, in the county of Berks; for it appears, that in the 22nd year of the reign of King Henry the Sixth, John Talbot, son of the Earl of Shrewsbury and Margaret, his wife, (which Margaret was one of the great granddaughters of Warinus de Insula,) was created Baron l'Isle by charter, the inrolment of which remains in the Tower, though the original cannot be found. That charter is as follows:”

[Here followed a copy of the charter to John Talbot, of which the substance is given in page 9, and a copy of which will be found in pages 32 and 33.]

“ Moreover, the subsequent charter of the 15th Edw. IV. creating Edward Grey Baron de l'Isle, after deducing the title of the manor of Kingston l'Isle from Warinus de Insula to John Talbot, in the same terms as in the charter of King Henry the Sixth, proceeds as follows;”

Qui quidem Joh'es filius habuit exitum Thomam Talbot, militem, nuper vicecomitem Lisle et Eliz. modo uxorem Edwardi Grey, militis, d'ni de Lisle et Margaretam nuper uxorem Georgii Vere militis et obitt, post cujus quidem mortem d'nium et manerium p'd'c'a descenderunt præfato Thome ut filio et hæredi ejusdem Johannis et obiit, post cujus mortem d'nium et manerium pæd' descenderunt præfatis Elizabethæ et Margar' ut sororibus et hæred' ipsius Thomæ, quam quidem Eliz'am Ed'rus Grey Miles Dñs de

Lisle duxit in uxorem, et postea præd'c'a Margareta obiit sine hærede de corpore suo procreat', cujus pretextu iidem Ed'rus Grey, miles, et d'nus de Lisle et Eliz' uxor sua fuerunt sèisiti de d'nio & maner' prædictis in d'nico suo ut de feodo in jure ejusdem Eliz' et habuerunt exitum 'inter eos legitime procreatum Joh'em et al' : Nos nedum præmissa verumetiam *qualiter præfatus Warinus et omnes Antecessores sui ratione d'nii et maner' prædictorum nomen et dignitatem Baronis et Domini de Lisle a tempore quo memoria hominum non existit optinuerunt et habuerunt ipseque et omnes Succesores sui ab eodem tempore per hujusmodi nomen Loca et Sessiones et alias pre-eminencias in Parliamentis et Conciliis regiis ut cæteri Barones Regni Angliæ a toto tempore prædicto habuerunt et optinuerunt*, qualiter etiam Status Principum et Sublimium constat in multitudine Subditorum et eo magis regale attollitur solium regnique regimen roboratur quo plures sibi subsistunt nobilis status et eminentiæ celsiorum intime contemplantes, volentesque Septrum Regni tam adjectione novorum quam restauratione veterum securius et firmitus stabilire et augere numerum per quorum consilium Regnum nostrum dirigi possit in dubiis et fulciri suffragiis in adversis, specialem considerationem habentes, de gratia nra speciali volumus et concedimus per presentes eidem Edwardo q'd ipse et hæredes sui de corpore ejusd' Elizæ, D'ni dictor' Domini et Manerii de Kingston Lisle exnunc D'ni et Barones de Lisle ac Barones Nobiles et Proceres regni nri habeantur teneantur et reputentur, habeantque nomen stilum titulum et honorem Baronum et Dominorum de Lisle ac Sessiones in Parliamentis et Consiliis nris et hæredum nror' ac aliis locis quibuscunque inter alios Barones Regni nri cum omnibus et omnimodis Dignitatibus ac pre-eminentiis Statui regni nri prædicti et præsertim Statui dictæ Baronie de Lisle ab antiquo pertinentibus sive spectantib'z eisdem modo et forma in o'ib'z et per o'ia tam in hujusmodi Sessionib'z quam cum o'ib'z et omnimodis aliis pre-eminen' et dignitatib'z quibuscunque prout *p'd'ct Warinus seu aliquis aliis Baronum Dominum p'd'c'a ante hec tempora habens et occupans habuit et tenuit*; & ne propter temporis prolixitatem aut Successionis variationem aliove modo de hujusmodi stilo nomine et dignitate aliquando dubitari possit, ad removendum omni-

modum hujusmodi dubitationi stipulum ipsum Edwardum fil' Joh'is in Dominum et Baronem de Lisle præficimus, et creamus eique nomen stilum titulum et honorem supradicta Baronis de Lisle damus et concedimus, habend' et tenend' nomen stilum titulum & honorem supradicta una cum Sessionibus supradictis in Parliamentis Consiliis & locis prædictis, necnon omnib'z et omnimodis dignitatib'z et pre-eminen' supradictis eidem Edwardo et hæredibus suis de corpore ejusd' Eliz' procreat' eisdem modo et forma prout prædictus Warinus haberet et teneret si ad præsens superstes existerit aliusve quiscunque qui unquam ante hec tempora Baro' de Lisle extiterit. Quare volumus et firmiter præcipimus pro nobis et hæredibus nris quantum in nobis est, quod præfatus Edwardus et hæredes sui de corpore ejusd' Eliz' procreat' d'ni manerii et Domini prædictorum exnunc Domini et Barones de Lisle ac Barones Nobiles et Procures Regni nri habeantur teneantur et reputentur habeantque nomen stilum titulum et honorem supradicta cum Sessionibus dignitatib'z et pre-eminenciis supradictis in forma supradicta imperpetuum. Hiis testib'z, &c.

“ In the Report of the Lord's Committee, to which reference has already been made, doubts are suggested as to the accuracy of the statements contained in these charters ; and some evidence was offered to me for the purpose of showing that the manor of Kingston l'Isle was not held by Warinus de Insula or his ancestors of the king *in capite* ; but even supposing that these recitals could now be shown to be inconsistent with the fact, or that it is competent for the claimant, deriving his title through the parties who accepted these charters containing such recitals, to controvert their accuracy<sup>1</sup>, still, they furnish strong evidence that it was not considered at the time of either of these grants, that Warinus de

<sup>1</sup> The petitioner, though he derives his descent from the grantees, did not claim either of the dignities created by those charters, but a dignity to which neither of them had any pretensions ; since they did not possess the character of *co-heir* of Warinus de Insula. This point will be again adverted to.



Insula had acquired the dignity of a baron by summons and sitting merely.

“ There is yet another point to which it is necessary I should refer. John Dudley, Duke of Northumberland, through whom the petitioner derives the character of heir lineal of Margaret Countess of Shrewsbury, was attainted of treason in the first year of the reign of Queen Mary. Guildford Dudley, Ambrose Dudley, afterwards Earl of Warwick, and Robert Dudley, afterwards Earl of Leicester, his three surviving sons, were attainted with him. Guildford Dudley, who was the husband of Lady Jane Grey, alone suffered death. In the 4th & 5th of Philip and Mary, an act of parliament was passed upon the petition of Ambrose Dudley and Robert Dudley, (the two then surviving sons of the duke,) and the Ladies Mary Sidney and Katherine Hastings (his surviving daughters); whereby it was enacted ‘ that the said Ambrose Dudley and Robert Dudley, and the said Lady Mary Sidney and Lady Katherine Hastings, and every of them and their heirs, and the heirs of every of them, from thenceforth might and should be, by virtue of that act, restored and enabled in blood and name, and made heir and heirs as well to the said Sir John Dudley, Knight, late Duke of Northumberland, their said father, as also to any other their ancestor or ancestors lineal or collateral, in such manner and form as if the said late duke their father, or they or any of them had never been attainted, and as if no such attainder or attainders were or had been had; the corruption of blood between the said late duke and his said therein-named children or any of them, or the corruption of blood between the same children and any other their ancestor or ancestors, or any act of parliament or judgment at the common law concerning the attainder of the said late duke their father, or of the said Ambrose Dudley, or of the said Robert Dudley, or any of them, or any other thing whereby the

blood of the said late duke their father, or of the said Ambrose Dudley, or of the said Sir Robert Dudley, or any of them, was corrupted, in anywise notwithstanding.' A clause follows enabling them to demand, ask, have, hold, and enjoy all such lands, tenements, and hereditaments, which should at any time thereafter descend to them other than such whereof the duke was seised on the day of his attainder, and which the Queen was entitled to have upon office found, and the act then proceeds :

“ ‘ Provided always, that this present act or any thing therein contained extend not to restore or entitle your said humble subjects or any of them or their heirs to any name of honour or dignity or to any such honours, castles, manors, lordships, lands, tenements, or hereditaments, which your Highness now hath or had, or is or might be entitled to have, by reason of any of the said several attainder or attainders.’

“ It has been contended before me that, under the circumstances of this case, your Majesty's prerogative of terminating the abeyance of the Barony of l'Isle in the claimant's favour, (if it should be your Majesty's royal pleasure so to do,) is not taken away or obstructed by the attainder of the Duke of Northumberland, and that such dignity never having been vested in the duke, the same was not affected by his attainder, that the attainder did not destroy the barony nor vest the entire right in the other co-heirs, (the Beaumont Case,) and that therefore your Majesty's right of selecting the claimant was not affected by the attainder of his ancestor ; and that, at all events, the act 4 & 5 Philip and Mary restores the blood, and that the dignity which is the subject of the present claim did not fall within the exception contained in that act.

“ This and the other points of the case are of so much importance and difficulty, that I humbly submit to your Majesty, that it will be proper for your Majesty, conformably

to the usage in similar cases, to refer the claim to the House of Peers to be considered by them.

“ Before concluding my Report, it is proper that I should inform your Majesty, that from pedigrees exhibited before me, it appears that the present co-heirs of Eleanor Lady Roos, the second daughter and co-heir of Elizabeth Countess of Warwick, are the Right Honourable George Capel, Earl of Essex, Sir Windsor Hunloke, of Wingerworth, in the county of Derby, Bart., and the Right Honourable Charlotte Baroness de Roos; and that the Most Noble Hugh Percy, Duke of Northumberland, Winchcombe Henry Howard Hartley, of Donington Castle, in the county of Berks, Esq., Sir Charles Knightley, of Fawsley, in the county of Northampton, Bart.<sup>1</sup>, Grey Jermyn Grove, of Pool Hall, in the county of Salop, Esq.<sup>2</sup>, [Villiers William] Villiers, Esq., the Right Honourable Montague Bertie, Earl of Abingdon, Sir Francis Burdett, of Foremark, in the county of Derby, Bart., William Fermor, of Tusmore, in the county of Oxford, Esq., and the Right Honourable John Lord Rollo, are the present co-heirs of Elizabeth Lady Latimer, the third daughter and co-heiress of Elizabeth Countess of Warwick.

“ But feeling it to be my duty to recommend to your Majesty to refer the claim of the petitioner to the House of Peers, I have not thought it necessary to require the attendance of the other co-heirs before me, or proof that they sustain that character.

“ All which I humbly submit to your Majesty’s royal wisdom.

“ R. GIFFORD.”

*January 1, 1824.*

<sup>1</sup> A mistake for James Knightley, Esq.

<sup>2</sup> Mr. Grove died before the case came before the House, and was succeeded by his daughter and heiress Troth Grove.

THE KING being subsequently moved upon this petition was pleased to refer the same, together with the Report of the Attorney-General thereunto annexed, on the 1st of May, 1824, to the Right Honourable the House of Peers, to examine the allegations thereof as to what related to the petitioner's title therein mentioned, and to inform his Majesty how the same might appear to their Lordships.

The House of Lords referred the consideration of the same to a Committee of Privileges.

## COMMITTEE OF PRIVILEGES.

THE Committee of Privileges to which the Petition was referred met on the 17th of June, 1824, when the Order of Reference, the Claimant's Petition, and the Attorney-General's Report were read.

Mr. Hart and Mr. Shadwell appeared as Counsel for the petitioner, and Mr. Solicitor - General on behalf of the Crown. The case was opened by,

*Mr. Hart.*—My Lords, this case is before your lordships in consequence of a petition presented by Sir John Shelley Sidney to His Majesty, stating himself to be the heir of the body of the eldest of the co-heirs of the Countess of Warwick, on whose death the Barony of De l'Isle became in abeyance, and praying of his Majesty to be graciously pleased to terminate the abeyance of that barony in his favour by a writ of summons to parliament. His Majesty was pleased to refer the petition to his Attorney-General, who, after considering the proofs, reported to His Majesty that the petitioner appeared to have made out his case, but, nevertheless, in respect of the importance of the subject, recommended that the case should be referred for the consideration of this House.

The barony in question was created, as our Case states, in the 31st year of King Edward the Third, and was a barony descendible to the heir general of the first peer. The petitioner shows it to have vested in Elizabeth Countess of Warwick. The countess died leaving three females, all co-heirs; and Sir John Sidney deduces his title as being the now heir of the body of the eldest co-heir, Margaret Coun-

tess of Shrewsbury, who was the eldest daughter of the Earl of Warwick.

*Lord Redesdale.*—All the first part of your pedigree<sup>1</sup>, by which you resort to the ancient descent, is mistaken. It is perfectly clear, from your own statement, that Warine de l'Isle, under whom you claim, could not be the younger brother of Henry de l'Isle, whom you represent him to be in your pedigree: I consider that it has nothing to do with your claim, but you state it, and confuse the case by it. It is material to understand how you state the origin of the title:—do you claim under the two letters-patent, or either of them?

*Mr. Hart.*—No.

*Lord Redesdale.*—Do you claim as being in possession of the manor of Kingston l'Isle?

*Mr. Hart.*—Certainly not; that creates a difficulty, if it be one, which I trust I shall be able to obviate. I know there was a creation of a title which purported to be annexed to a territorial possession, but our title is paramount.

*Lord Redesdale.*—You claim as being descended from Warine de l'Isle, who was summoned to parliament in the reign of Edward the Third, in the 31st Edward III., and if you take up your pedigree from him you will save a great deal of trouble: it is perfectly clear that the first part of the

<sup>1</sup> The Claimant's case contained a great deal of extraneous matter, which was more than once alluded to in the proceedings, and which was afterwards described as the "ornamental part of the case." Instead of commencing the pedigree with Gerard de l'Isle, the person first summoned to parliament, his descent was erroneously deduced from a Henry Fitz Gerald, younger brother of Warine Fitz Gerald, whose daughter and heiress married Baldwin de Rivers, Earl of Devon, but which, if true, was wholly irrelevant to the claim before the Committee.

pedigree is mistaken. It is usual, in stating a case of this kind, to state the person from whom you claim, and draw the case down.

*Mr. Hart.*—I was about to state, that we begin with Gerard de l'Isle who had a summons to parliament in the 31st year of the reign of Edward the Third, that summons to parliament being afterwards renewed to his son, Warine de l'Isle, who sat in successive parliaments under writs of summons; and it is our proposition of law, that the succession of summonses, so issued to the first peer and his son, and he being received by your lordships as a peer of the realm in successive parliaments, are in law evidence of the existence of a barony descendible to the heirs general, and from Warine de l'Isle we deduce our pedigree.

*Lord Redesdale.*—The best way is to throw No. 1<sup>1</sup>. out of the question, beginning with No. 2<sup>2</sup>. You put Gerard de l'Isle and Warine de l'Isle in your pedigree, No. 1., but you begin No. 2. with them again, therefore, throw out of the case the pedigree No. 1., and you begin right: it is perfectly clear from your own statement, that Warine de l'Isle, the father of Gerard de l'Isle, cannot be the younger brother of Robert de l'Isle, for Robert de l'Isle was just of age in

<sup>1</sup> The pedigree alluded to in the last note, deducing the descent of Gerard de l'Isle from Henry, brother of Warine Fitz Gerald.

<sup>2</sup> The pedigree commencing with Gerard de l'Isle, who was summoned in the 31st Edw. III., and showing that the Claimant was his eldest co-heir. It is remarkable, that the upper part of that pedigree is decidedly erroneous. Warine de l'Isle, the second baron by writ, is there made to marry Alice, sister and heiress of Henry de Tyes, whereas he married Margaret, daughter and co-heiress of William Pipard, and the said Alice was his *grandmother*, namely, wife of Warine de l'Isle, who died 1st Edw. III., by whom she had Gerard de l'Isle, who was summoned in the 31st Edw. III. This point is the more material, from the probability that Gerard de l'Isle was summoned to parliament in right of the Barony of Tyes, of which his mother was the sole heiress.—See p. 1, note <sup>2</sup>.

the third year of Edward the Second, and Warine de l'Isle, whom you suppose to have been his younger brother, was, ten years before, one of the King's commanders in Scotland; he is probably one of the same family, but he certainly was not the younger brother. I consider No. 1. as an ornament the Heralds<sup>1</sup> have put in at the head, for you begin No. 2. with that which is material.

*Mr. Hart.*—We thought it right to refer to the Heralds<sup>1</sup> to give us the pedigree of the family, and they have certainly been merciful in only giving it to us from William the Conqueror.

The course in which, by the permission of the House, I propose to proceed is this, to produce the several documents on which we rely, which are muniments that admit of but little question. I will begin by calling attention to these muniments as they are numbered in the printed Case. Having done that, and produced the small portion of parol evidence which this case seems to require, it will be then for us to submit the observations we have to make in deducing the pedigree for the purpose of satisfying the Committee that our inferences are right on two points, namely, first, the fact of our being the representative of the eldest co-heir of the body of that individual, Gerard de l'Isle; and that there then existed in law and does now exist, a barony descendible to the heirs general of these persons which is at this moment in abeyance.

In the Printed Papers, entitled a List of Proofs for the case in question, the proofs are referred to. The first is from the rolls of the 31st of Edward the Third, being a

<sup>1</sup> This part of the pedigree was *not* supplied by the Heralds but by the Claimant's solicitor. It was subsequently stated to have been found amongst the family evidences of the Claimant, and was drawn out by a retainer of the Sidney family. See p. 98.



writ of summons to parliament, tested the 15th of December, and directed to "Gerardus de Insula." The other documents, from that No. 1. in the Printed Papers down to No. 21, are all of them from the same archives.

*Lord Chancellor.*—Does anybody attend for the other co-heirs?

*Mr. Hart.*—We have traced the pedigree of the other co-heirs, and such of them as are in England have had notice, but one or two of them are not in the kingdom.

*Lord Chancellor.*—The first step to be taken will be to prove the notice to those co-heirs. It is a point the co-heirs have a right to dispute with you whether you are a co-heir, therefore we are not entitled to go into the case until that notice is proved.

*Mr. Hart.*—In a pedigree, commencing with the 31st Edward III., it would be impracticable for us to prove with certainty the pedigree of other co-heirs when they branch off.

*Lord Chancellor.*—All the Committee means is to see that you have given to those persons, whom you represent in your pedigree to be the co-heirs, notice of this proceeding.

*Mr. Hart.*—We have not only given them notice, but we have used considerable pains to trace their pedigree where it branches off from ours. I think that it will be found to a reasonable extent we prove, that the co-heirs consist of the following persons: the Earl of Essex, to whom a notice has been given; Sir Henry Hunloke, who is a minor, and is at this time with his mother and guardian in Italy, to whom we have not been able to give notice, nor to his guardian; Lady de Roos, the Duke of Northumberland, Winchcombe Henry Howard Hartley, Esq., Miss Grove, and James Knightley, Esquire, to all of whom we have given notice. Villiers William Villiers, Esq. we consider to be a co-heir.

*Lord Redesdale.*—It is material you should give him notice, because I know the family have always pretended a claim to this title.

*Mr. Hart.*—Villiers William Villiers is, we understand, a co-heir, and we have given him a notice. The Earl of Abingdon and Sir Francis Burdett are co-heirs, and have had notice; William Fermor, Esq. is likewise a co-heir, he is at Boulogne in France; we have not served him personally, but have given notice to his agent, who resides in London. Lord Rollo is likewise another of the co-heirs, and we have given him notice. As far as we have been able to trace, these are the individuals who represent among them the character of heirs of the body of the two younger sisters of that lady from whom we deduce our pedigree.

[Witnesses were then called who proved having served notices on several of the co-heirs, copies of which were delivered in<sup>1</sup>.]

*Evidence produced.* The writ of summons to parliament to Gerard de l'Isle, in the 31st Edw. III., was then proved by the production of the original Clause Roll of that year; and the death of that person, on the 9th of June, 34th Edw. III., by the Inquisitio Post Mortem of the 34th Edw. III., the original of which was read. To prove that Warine de l'Isle, his son and heir, was summoned to parlia-

<sup>1</sup> Lord Shaftesbury stated, that notices to co-heirs should always be served on the parties when the cases are first laid on the Table. As some informality occurred in serving one or more of these notices, the Solicitor-General remarked, that if the Claimant was then permitted to proceed in his case, it must only be *de bene esse*, leaving him at liberty to object to the regularity of some of these notices in case a more complete service should not take place previous to the next Session of Parliament.

The Lord Chancellor observed that counsel might produce their documents, but must give a more regular notice in those cases in which the service had been defective.

ment in the 43rd, 44th, 46th, 47th, and twice in the 49th year of the reign of Edward the Third, and again in the 1st, twice in the 2nd, 3rd, 4th, and thrice in the 5th years of Richard the Second, the Clause Rolls of the respective years were read.

Counsel then stated, that to prove that Warine de l'Isle sat in parliament as a baron of the realm under the above summonses they should, in its proper place in the numerical order of the proofs, produce a charter granted by authority of parliament<sup>1</sup>, in the 22nd Hen. VI., in which he was styled "Warinus nuper Dominus de l'Isle," and stated to have had seat and place in parliament amongst the barons of the realm; and that they would hereafter submit that such charter, coupled with the fact of the continued succession of summonses in the form above mentioned, and the rank and degree in which he is introduced in the writs, was sufficient evidence that the dignity of a baron in fee was vested in him.

The death of Warine de l'Isle, on the 28th of June, 6 Ric. II., and that he left his daughter Margaret, the wife of Thomas de Berkeley, Knight, of the age of twenty-two years and upwards, his next heir, were then proved by the Inquisitio Post Mortem of the 6th Ric. II.; and it was shown by a similar inquisition on the death of her husband, Lord Berkeley, in the 5th Hen. V., that she died before that year, leaving her daughter Elizabeth, the wife of Richard Earl of Warwick, her heir; which Elizabeth Countess Warwick was by that inquisition found heir to her father, and then of the age of thirty years and upwards.

The counsel for the petitioner produced the charter of the 22nd Hen. VI. for the purpose of proving that Warine de l'Isle sat in parliament under the writs of summons addressed to him, and also to prove that the said Elizabeth Countess

<sup>1</sup> "Per auctoritate Parliamenti." Upon this expression a discussion afterwards arose, whence it is manifest that the meaning here attributed to it is erroneous.

of Warwick left issue three daughters, Margaret, Eleanor, and Elizabeth; that Margaret became the wife of John Talbot, Earl of Shrewsbury, and had issue by him a son, Sir John Talbot, Knt. An original charter, of which the following is a copy, was then read.

*D' Barone de Lisle constituto.*

R. Archiepis' Epis' &c. sal't'm. Sciatis q'd cum Warinus nup. dñs de Lisle defunctus nup. seiscitus int. alia de dñio et man'io de Kyngeston Lisle cum p'tin. in com. Berk. h'uerit exitum quandam Margaretam, quam Thomas dñs de Berkeley duxit in ux'em, et obierit, post cujus mortem dñium et man'ium illa cum p'tin. eidem Margarete ut filie et heredi ejusdem Warini descendere ijdemq. Thomas et Margareta h'uerunt exitum int. se quandam Elizabeth', quam carissimus consanguineus n'r Ric'us nup. Comes Warwici duxit in ux'em, et obierunt, cui quidem Elizabeth' ut filie et heredi ejusdem Margarete dñium et man'iu' p'dict. cum p'tin. int. alia post mortem ejusdem Margarete descendere, qui quidem nup. Comes et Elizabeth' h'uerunt exitum int. se Margaretam, Alianoram, et Elizabeth', adhuc sup'stites, et obierunt, quam quidem Margaretam filiam Elizabeth' carissimus consanguineus n'r Joh'es Talbot Comes Salop. duxit in ux'em, qui quidem Comes Salop. et Margareta ux. sua h'ent exitum int. se quandam Joh'em Talbot militem, cui ijdem Comes Salop. et Margareta ux. ejus, qui dict. man'ium et dñium cum p'tin. int. alia nup. tenuerunt in partem p'partis ip'ius Margarete ip'am de om'ib. t'ris et ten. que fuerunt p'd'ce Elizabeth' ux'is p'fati Ric'i die quo obiit, juxta partic'o'em inde int. ip'am Margaretam et p'fatas sorores suas de ear. co'i assensu post mortem d'c'e Elizabeth' ux'is p'd'ci Ric'i r'onabilit. fact. conting. dñium et man'iu. p'd'ca cum p'tin. nup. dederunt et concesserunt, h'end. et tenend. eidem Joh'i filio et heredib. suis de capitalib. dñis feodi illius p. s'vic. inde debit. et de jure consuet. imp'p'm; Nos nedum p'missa verum eciam qualit. p'fatus Warinus et om'es antecessores sui r'one dñii et man'ii p'd'cor. nomen et dignitatem Baronis et Dñi de Lisle a tempore quo memoria ho'im non existit optinuerunt et h'uerunt ip'e q. et om'es successores sui p'd'ci ab eodem tempore p. hujus-

modi nomen, loca et sessiones et alias p'eminencias in parliamentis et consiliis regiis, ut cet'i Barones regni Anglie, à toto tempore p'd'co h'uerunt et optinuerunt, qualiter etiam status principum sapientum et sublimiu' constat multitudine subditor. et eo magis regale attolitr solium regniq. regimen roboratr quo plures sibi subsistunt nobilis status et eminencie celsior. intime contemplantes, volentesq. septrum regni tam adjecc'oe novor. honor. q'm restaurac'oe vet'um securius et firmitus stabilire et augere, num'um, p. quor. consilium regnu. nrm dirigi possit in dubiis et fulsiri suffragiis in adu'sis, atq. p'ximitati sanguinis qua p'fatus consanguineus n'r Joh'es fil. Joh'is p'sone n're attingit sp'alem considerac'oem h'entes, de gra. n'ra sp'ali volum. et concedim. p. p'sentes eidem Joh'i fil. Joh'is q'd ip'e et heredes sui, dñi d'c'orum dñi et man'ij de Kyngeston Lisle, exnunc Dñi et Barones de Lisle ac Barones nobiles et p'ceres regni n'ri h'eant'r, teneant'r et reputent'r, h'eantq. nomen, stilum, titulum, et honorem Baronu' et Dñor' de Lisle, ac sessiones in parliamentis et consiliis n'ris et heredum n'ror. ac aliis locis quibuscumq. int. alios Barones regni n'ri cum om'ib. et om'imodis dignitatib. ac p'eminen. statui Baronis regni n'ri p'd'ci, et p'sertim statui d'ce Baronie de Lisle, ab antiquo p'tinen. sive spectant. eisdem modo et forma in om'ib. ac p. om'ia, tam in hujusmodi sessionib. q'm cum om'ib. et om'imodis aliis p'eminenciis et dignitatib. quibuscumq. p'ut d'cus Warinus seu aliquis alius Baroniam et dñium p'd'ca ante hec tempora h'ens et occupans h'uit et tenuit; et ne p'pt' temporis p'lixitatem aut successionis variac'oem, aliove modo, de hujusmodi stilo no'i'e et dignitate aliquando dubitari posset, ad removend. om'em hujusmodi dubitacois scrupulum ip'm Joh'em fil. Joh'is in Dñm et Baronem de Lisle p'ficimus et creamus, eiq. nomen, stilum, titulum, et honorem sup'dict. Baronis de Lisle damus et concedim. h'end. et tenend. nomen, stilum, titulum, et honorem sup'dict. una cum sessionib. sup'd'cis in parliamentis, consiliis, et locis p'd'cis, necnon om'ib. et om'imodis dignitatib. et p'eminenciis sup'd'cis eidem Joh'i fil. Joh'is hered. et assignat. suis imp'p'm, eisdem modo et forma p'ut p'd'cus Warinus h'eret et teneret si ad p'sens sup'stes existe't, aliusve quicumq. qui unq'm ante hec tempora Baro de Lisle

extitit. Quare volum. et firmit. p'cipim. p. nob. et heredib. nris quantum in nob. est, q'd p'fatus Joh'es fil. Joh'is et heredes sui dñi man'ij et dñij p'd'cor. exnunc Dñi et Barones de Lisle ac Barones, nobiles, et p'ceres regni nri h'eant'r, teneant'r, et reputent'r, h'eantq. nomen, stilum, titulum et honorem sup'd'ca, cum sessionib. dignitatib. et p'eminenciis sup'd'cis in forma sup'd'ca ut p'd'cm est imp'p'm. Hiis testib. ven'abilib. p'rib. J. Cantuarien. Archiep'o tocius Angl. primate Cancellario nro, W. Lincoln. et W. Sar. Ep'is, carissimo avunculo nro Humfr'o Gloucestr. et carissimo consanguineo nro Joh'e Exon. Ducib., carissimis consanguineis nris Humfr'o Stafford et Will'o Suff. Senescallo hospicij nri Comitib., dil'cis et fidelib. nris Rad'o de Cromwell et Rad'o Botiller Thes. nro Angl. militib., dil'co cl'ico nro Mag'ro Adam Moleyns Custode privati sigilli nri, et aliis. Dat. p. manu' nram apud Westm. xxvj die Julij.

P. bre' de privato sigillo et de data p'd'ca auctoritate Parliamenti.

An Inquisitio Post Mortem of the 17th Hen. VI., on the death of Richard Earl of Warwick, was then produced to prove that, conformably to the recital in that charter, Elizabeth Countess of Warwick died in the lifetime of her husband, and left her said three daughters her coheireses, and that Margaret Countess of Shrewsbury was her eldest daughter. The charter creating the said John Talbot, then Baron de l'Isle, and the heirs male of his body, Viscount de l'Isle with seat and place in parliament, councils, and all other assemblies, immediately after Henry Viscount Bouchier, and above all barons, tested at Westminster the 30th of October, 30 Hen. VI., was next read.

To prove that John Talbot, Viscount and Baron de l'Isle left issue a son, Thomas Talbot, and two daughters, viz. Elizabeth the wife of Sir Edward Grey, Knight, and Margaret, the wife of Sir George Vere, Knight, and that the said Margaret died without issue, the patent creating the said Sir Edward Grey, Baron de l'Isle, in the 15th Edw. IV., was read, and of which the following is a copy.

*De Creatione Ed'r'i Grey, Militis, Dñi de Lisle.*

Edwardus, Dei Gratia, &c. Sal't'm. Sciatis quod cum Warinus nuper Dominus de Lisle defunctus nuper seisitus inter alia de dño & manerio de Kingston Lisle cum p'tinentiis in Com. Berks habuerit exitum quandam Margaretam quam Thomas Dñs de Berkeley duxit in uxorem et obierit, post cujus mortem Dominium et Manerium illa cum pertinentiis eidem Margaretæ ut filiæ & hæredi ejusdem Warini descenderunt, iidemque Thomas et Margareta habuerunt exitum inter se quandam Elizabetham quam Richardus nuper Comes Warwici duxit in uxorem, cui quidem Elizabethæ ut filiæ et hæredi ejusd' Margaretæ d'nium et manerium p'd'c'a cum p'tin. inter alia post mortem ejusd' Margaretæ descenderunt, qui quidem nuper Comes et Eliza h'uerunt exitum inter se Margaretam Alianoram & Eliz'am et obierunt, quam quidem Margaretam filiam Elizæ Joh'es Talbot Comes Salop duxit in ux'em, qui quidem Comes Salop et Margareta ux. sua habent exitum inter se quandam Joh'em Talbot, militem, cui iidem Comes Salop & Margareta uxor ejus qui dicta manerium et d'nium illa cum p'tin' inter alia nuper tenuerunt in p'tem purpartis ipsius Margaretæ ipsam de o'ib'z terris et teneamentis quæ fuerunt præd' Eliz. uxoris præfati Ricardi die quo obiit juxta partitionem inde inter ipsam Margaretam et præfatas sorores suas de earum communi assensu post mortem d'c'æ Eliz' uxor' præd' Ricardi rationabiliter factum contingentis d'nium et manerium p'd'ca cum p'tin' nuper dederunt et concesserunt: habend' et tenend' eidem Johanni filio & hæredibus suis de capitalib'z d'nis feodi illius per servicia inde debita et de jure consueta imperpetuum: Qui quidem Joh'es filius habuit exitum Thomam Talbot, militem, nuper vicecomitem Lisle et Eliz. modo uxorem Edwardi Grey, militis, d'ni de Lisle et Margaretam nuper uxorem Georgii Vere militis et obiit, post cujus quidem mortem d'nium et manerium p'd'c'a descenderunt præfato Thome ut filio et hæredi ejusdem Johannis et obiit, post cujus mortem d'nium et manerium præd' descenderunt præfatis Elizabethæ et Margar' ut sororibus et hæred' ipsius Thomæ, quam quidem Eliz'am Ed'rus Grey Miles Dñs de Lisle duxit in uxorem, et postea præd'c'a Margareta obiit sine hærede de corpore suo procreat', cujus pretextu iidem Ed'rus

Grey, miles, et d'nus de Lisle et Eliz' uxor sua fuerunt seisiti de d'nio & maner' prædictis in d'nico suo ut de feodo in jure ejusdem Eliz' et habuerunt exitum inter cos legitime procreatum Joh'em et al': Nos nedum præmissa verumetiam qualiter præfatus Warinus et omnes Antecessores sui ratione d'nii et maner' prædictorum nomen et dignitatem Baronis et Domini de Lisle a tempore quo memoria hominum non existit optinuerunt et habuerunt ipseque et omnes Successores sui ab eodem tempore per hujusmodi nomen Loca et Sessiones et alias præ-eminencias in Parliamentis et Conciliiis regiis ut cæteri Barones Regni Angliæ a toto tempore prædicto habuerunt et optinuerunt, qualiter etiam Status Principum et Sublimium constat in multitudine Subditorum et eo magis regale attollitur solium regni que regimen roboratur quo plures sibi subsistunt nobilis status et eminentiæ celsiorum intime contemplantes, volentesque Septum Regni tam adjectione novorum quam restauratione veterum securius et firmitus stabilire et augere numerum per quorum consilium Regnum nostrum dirigi possit in dubiis et fulciri suffragiis in adversis, specialem considerationem habentes, de gratia nra speciali volumus et concedimus per presentes eidem Edwardo q'd ipse et hæredes sui de corpore ejusd' Elizæ, D'ni dictor' Domini et Manerii de Kingeston Lisle exnunc D'ni et Barones de Lisle ac Barones Nobiles et Procere regni nri habeantur teneantur et reputentur, habeantque nomen stilum titulum et honorem Baronum et Dominorum de Lisle ac Sessiones in Parliamentis et Consiliis nris et hæredum nror' ac aliis locis quibuscunque inter alios Barones Regni nri cum omnibus et omnimodis Dignitatibus ac pre-eminentiis Statui regni nri prædicti et præsertim Statui dictæ Baronizæ de Lisle ab antiquo pertinentibus sive spectantib'z eisdem modo et forma in o'ib'z et per o'ia tam in hujusmodi Sessionib'z quam cum o'ib'z et omnimodis aliis pre-eminenc' et dignitatib'z quibuscunque prout p'd'ct' Warinus seu aliquis aliis Baronum Dominium p'd'c'a ante hec tempora habens et occupans habuit et tenuit; & ne propter temporis prolixitatem aut Successionis variationem aliove modo de hujusmodi stilo nomine et dignitate aliquando dubitari possit, ad removendum omnimodum hujusmodi dubitationi stipulum ipsum Edwardum fil' Joh'is in Dominum et



Baronem de Lisle præficimus, et creamus eique nomen stilum titulum et honorem supradicta Baronis de Lisle damus et concedimus, habend' et tenend' nomen stilum titulum & honorem supradicta una cum Sessionibus supradictis in Parliamentis Consiliis & locis prædictis, necnon omnib'z et omnimodis dignitatib'z et pre-eminen' supradictis eidem Edwardo et hæredibus suis de corpore ejusd' Eliz' procreat' eisdem modo et forma prout prædictus Warinus haberet et teneret si ad præsens superstes existerit aliusve quis-cunque qui unquam ante hec tempora Baro de Lisle extiterit. Quare volumus et firmiter præcipimus pro nobis et hæredibus nris quantum in nobis est, quod præfatus Edwardus et hæredes sui de corpore ejusd' Eliz' procreat' d'ni manerii et Domini prædictorum exnunc Domini et Barones de Lisle ac Barones Nobiles et Proceres Regni nri habeantur teneantur et reputentur habeantque nomen stilum titulum et honorem supradicta cum Sessionibus dignitatib'z et pre-eminenciis supradictis in forma supradicta imperpetuum. Hiis testib'z venerabilib'z in Christo Patrib'z Tho' Cardinal Archiep'o Cantu' et Tho' Ep'o Linc' Canc' nro Angliæ, ac præcarissimis Fratrib'z nris Georgio Clarenciæ et Ric'o Glouc' Ducib'z, necnon carissimis consang' nris Henr'o Essex Thes' nro Angl' Comitib'z dilectisque et fidelib'z nris Tho' Russell Cl'ico Custode privati Sigilli nri, ac' Tho' Stanley de Stanley Senesc' hospicii nri, et Will'mo Hastings' de Hastings Camerar' Hospic' nri Militibz, et aliis. Dat' per manum nram apud Palacium nrm Westm' xiiij die Marcii Anno Regni nri quinto decimo. Per breve de privato sigillo et de dat' &c.

An Inquisitio Post Mortem of the 10th Edw. IV. was produced to show that Thomas Talbot Viscount and Baron de l'Isle died on the 20th March 10 Edw. IV., and that his sisters Elizabeth and Margaret were his heirs.

The petitioner's counsel here produced an Inquisition of the 1st Edw. III. after the death of Warine de l'Isle, the grandfather of Warine Lord de l'Isle, to show that the manor of Kingston l'Isle was then held of Robert de Insula by knight service and not of the Crown *in capite*, whence it

appeared that he held that manor " de Roberto de Insula p' homagiu' et fidelitate' et p' s'viciu' uni' feodi et dimid' militis et reddendo inde eidem Roberto unu' par calcarior' deaurator' p' annu' p' om'i servicio<sup>1</sup>." The inquisition in the 34th Edw. III. after the death of Gerard de l'Isle, and the inquisition on the death of Warine Lord de l'Isle in the 6th Ric. II. were referred to, as showing that that manor was at both those periods held of Robert de Insula by knight service and not of the Crown *in capite*. The " Testa de Nevill" was afterwards produced to prove that Warine Fitz Gerald held one fee in Kingston of Margery de Rivers by knight service, and consequently, that it was not held of the Crown by military service, and that it was acquired previous to a barony being created to the family; and an Inquisitio Post Mortem of the 3rd Edw. II. was read to show that Robert de Insula was the heir of the said Margery de Rivers.

The proofs in support of the petitioner's pedigree were then proceeded with. The Inquisitio Post Mortem of the 8th Hen. VII. on the death of Edward Grey Viscount and Baron de l'Isle was produced to prove that his wife Elizabeth (sister and eventually sole heir of Thomas Talbot Viscount de l'Isle) died in the lifetime of her husband, and that John Grey, her son by the said Edward Viscount l'Isle, was her next heir. To prove that the said John Grey Viscount and Baron de l'Isle died on the 6th Sept. 20 Hen. VII. and that he left his daughter Elizabeth then of the age of eight weeks, his heiress, an Inquisitio Post Mortem of that year was read.

The Patent Roll of the 15th Hen. VIII. creating Sir

<sup>1</sup> The object of producing this inquisition was to prove the falsehood of the statements in the charters to John Talbot in the 22nd Hen. VI., and to Edward Grey in the 15th Edw. IV., that Warine de l'Isle and all his ancestors had been barons of the realm by reason of the tenure of that manor.

Arthur Plantagenet, the then husband of Elizabeth, eldest sister of John Grey, the last Viscount de l'Isle, Viscount l'Isle was then read, to prove that Elizabeth Grey, daughter and heiress of the said John Grey, died before the 15th Hen. VIII. without issue, and that the said Elizabeth, wife of Sir Arthur Plantagenet, became heir to the said John Grey Viscount l'Isle<sup>1</sup>.

The counsel for the petitioner stated that they would (as they did) afterwards prove that the said Elizabeth, wife of Sir Arthur Plantagenet Viscount l'Isle left, by her first husband Edmund Dudley, a son and heir John Dudley, afterwards Duke of Northumberland; that the said John Dudley Duke of Northumberland left several sons and daughters; and that the Lady Mary, his eldest daughter, intermarried with Sir Henry Sidney, Knight, and was the only one of the duke's children that left issue. As John Dudley Duke of Northumberland had been attainted of high treason in the 1st year of Queen Mary, the act of parliament passed in the 4th & 5th of King Philip and Queen Mary for the restitution in blood of the Lady Mary Sidney and the other surviving children of the said duke was produced, of which a copy follows—

<sup>1</sup> That document will be found in the APPENDIX, because it shows that Sir Charles Brandon K. G., afterwards Duke of Suffolk, was created Viscount l'Isle by patent, 15 May, 5 Hen. VIII. 1513, to him and the heirs male of the body of Elizabeth Grey, *ad tunc* Viscountess l'Isle; but that as the marriage between him and the said Elizabeth late Viscountess l'Isle, lately deceased, had not been solemnized according to the King's intentions when he granted that patent, the said letters patent were delivered up to be cancelled. It is worthy of remark, as showing the laxity with which titles of honour were applied in the most solemn instruments, that the said Elizabeth, daughter and heiress of John Grey Viscount l'Isle, had not the slightest pretensions to the title of *Viscountess*, that dignity having been created to her grandfather, with remainder to his heirs *male* by his wife Elizabeth Talbot. If, as appears probable, she was possessed of the manor of Kingston l'Isle, she was, however, undoubtedly Baroness de l'Isle under the patent of the 15th Edw. IV. to her grandfather Edward Grey, and also under the patent of the 22nd Hen. VI. to her great grandfather Sir John Talbot.

In moste humble and lamentable wise shewith unto your Highnes yo'r faithfull and most obedient subiects Ambrose Dudley and Roberte Dudley Knights, Sonnes of Sir John Dudley Knight, late Duke of Northumberlande, and yo'r feithfull and obedient subiects the Lady Mary Sydney, nowe Wife of Sir Henry Sydney Knight, and the Lady Katheryn Hastings, now Wife of the Right Hon'able Henry Lorde Hastings, Daughters of the said late Duke, That where synce the begynnyng of yo'r Ma'ts reigne as well the said late Duke their Father as the said Ambrose and Robert, two of y'r Highnes most humble petition'rs suppliaunts and subiects, as well by authority of P'liament as also by force of dyv's sev'al attayndo's against their seid Father and them the seid Sir Ambrose and Sir Robert and ev'y of them given and p'nounced by th'order of the comon lawes of this Realme were sev'ally attaynted of sev'all offences of High Treason by them sev'ally comytted, p'petrated, and don against yo'r Highnes their most dreede Sov'aigne Lady yo'r crowne and dignitie imperyall, as by the records of the sead sev'all Attaynds thereof dothe more playnely appeare, And by reason thereof yo'r most humble subiects stands and be p'sons in their lynags and blodd corrupted, wherby they be not onely deprived of alman', degrees, estats, names, farmes, and of all inheritaunce that shuldd or myght come unto them or any of them by or from their said late Father, yf the same their seid late Father, nor they had not byn in any wise attaynted; but also of all and syngular other inheritaunce that shuldd or myght have come unto yo'r seid subiects or any of them by or from any other their lyneall or collaterall Auncesto'r or Auncestours, to whome them or any of them shulde or myght have conveyed, or may convey themselves as next Cosyn and Heire of bloud by meane degres to them or any of them, wherby yo'r seid subiects as nowe remayne out of all name and reputacon to their greate discomforte inwarde greife and dayly sorrowe: And forasmoche as yo'r seid most humble subiects be and always ev' synce the seid attayndo'rs have byn and alwayes hereafter entende to be to yo'r Highnesses true and feithfull subiects. It may therfore please yo'r Highnesses of yo'r most noble and habundaunt grace at the most humble peti'ons and suits of yo'r seid subiects, and for

the true and feithfull s'vice w'ch yo'r seid subiects and ev'y of them have don and intende to do during their lyfs to yo'r Ma'ts and your Heires, being moved w't yo'r accustomed clemency, compassyon, and pyttie towards them and ev'y of them, and having alredy good proffe and tryall of their fidelities towards yo'r Highness, That it may be at the humble suite and petic'on of your seid subiects ordeyned, establisshed, and enacted by yo'r Highnesses, w't th'assent of the Lords Sp'uall and Temporall, and of the Comons in this p'nt P'lyament assembled, and by th'authoritie of the same, that yo'r seid most humble suppliaunts Ambrose Dudley and Robert Dudley Knights, and the seid Lady Mary Sydney and Lady Katheryn Hastings, and ev'y of them and their Heires and theires of ev'y of them, from hensforth may and shalbe by th'auctoritie of this Acte restored and inhabled in bloud and name, and made Heire and Heires, as well to the said Sir John Dudley Knight, late Duke of Northumberlande, their seid Father, as also to any other their Ancesto'r or Ancesto'rs lyneall or collaterall, in such man' and fo'me as yf the seid late Duke their Father, or they or any of them had nev' byn attaynted, and as if no such attayndo'r or attayndo'rs were or had byn had, The corrupc'on of bloud betwene the seid late Duke their Father, and yo'r said subiects or any of them, or the corrupc'on of bloud betwene yo'r seid subiects and any other their Ancesto'r or Ancesto'rs, or any Acte of P'lyament or judgement at the comon lawe concernyng the attayndo'r of the seid late Duke their Father, or of the seid Sir Ambrose Dudley, or of the seid Sir Robert Dudley, or any of them, or any other thyng wherby the bloud of the seid late Duke their Father, or of the seid Sir Ambrose Dudley, or of the seid Sir Robert Dudley, or of any of them, is, should, or myght be corrupted in any wise notw'standing. And also that it may be further established and enacted by yo'r Highnesses and the Lords Sp'uall and Temporall, and the Comons in this p'nt P'lyament assembled, and by the authoritie of the same, that yo'r seid humble subiects Ambrose Dudley and Robert Dudley, the Lady Mary Sydney, and the Lady Katheryn Hastyngs, and ev'y of them, and their Heires and theires of ev'y of them, from hensforth may and shalbe enabled to demaunde, aske, have, holde,

and enioy all such lands, ten'ts, and hereditaments, w'th their ap-  
 p'ten'nc's, w'ch at any tyme hereafter shall descende, come, remayne,  
 or rent, from any their Ancesto'r or Ancesto'rs, other than such  
 Castles, Mano'rs, lands, ten'ts, rents, rev'c'ons, remayndo'rs, pos-  
 sessions, and other hereditaments, w'ch were of the seid Sir John  
 Dudley Knight, late Duke of Northumberland, their seid Father,  
 in use, possession, remaynder, or otherwise, the day of the attayn-  
 do'r of their seid late Father, and other then such Castles, Hono'rs,  
 Mano'rs, lands, ten'ts, and other hereditaments as yo'r Highnes  
 o'r most dread Sov'aign Lady was or is entytled to have, or might,  
 or ought to have upon any office founde or to be founde by force of  
 the said sev'all attayndo'rs, or any of them, in such and like man',  
 fo'me, and condic'on, to all intents, construcc'ons, and p'poses, as  
 yf the seid Duke their Father, or they or any of them, had nev'r  
 byn attaynted, and as though no such attayndo'r of their seid late  
 Father, or of them or any of them, had ev'r byn had or made, and  
 that yo'r seid subiects, and ev'y of them and theires of ev'y of  
 them, may att all tymes hereafter use and have any acc'on or suite,  
 and make their or his pedegres and conveyances in bloud as heires,  
 as well to and from their seid Father, as also to any other their  
 Auncesto'r or Auncesto'rs, lyneall or collaterall, in like man' and  
 fo'me as if the seid late Duke their Father, or they or any of them,  
 had nev' byn attaynted, and as yf no such attayndo'r or attayndo'rs  
 were or had byn had, the corrupc'on of bloude betwene the seid late  
 Duke their Father and yo'r seid subiects or any of them, nor the  
 corrupc'on of bloud betwene yo'r seid subiects and any other their  
 Auncesto'r or Auncesto'rs, or any Act of P'liament, or iugement at  
 the comon lawe concerning the attayndo'r of the seid late Duke  
 their Father, or of the seid Sir Ambrose Dudley, or of the seid Sir  
 Robert Dudley or any of them, or any other thyng whereby the  
 bloud of the said late Duke their Father, or of the seid Sir Ambrose  
 Dudley, or of the seid Sir Robert Dudley, or of any of them, is or  
 shuld be corrupted, to the contrary in any wise notwithstanding.  
 Provided alway, and be it enacted by the thautoritie aforeseid,  
 that this p'nt Acte, or any thing therein conteyned, extende not  
 to restore or entyle yo'r seid humble subiects, or any of them,

or their heires, to any name of honnor or dignitie<sup>1</sup>, or to any such Hono'rs, Castles, Mano'rs, Lordships, Lands, Tent's, and other Hereditaments, w'ch yo'r Highnes now hath or had, or is or might be entitled to have, by reason of any the seid sev'all attaindo'r or attaindo'rs; nor shall not extend to any Hono'rs, Castles, Mano'rs, Lordships, lands, ten'ts, rents, rev'c'ons, serv's, and other hereditaments late of the seid late Duke, nor of yo'r seid subiects, nor any of them, w'ch yo'r Highnes hath given, dimised, exchaunged, or graunted to any person or persons in fee symple, fee taile, for terme of lyfe, life, yeres, or at will; but that all the seid Hono'rs, Castles, Lordships, Mano'rs, lands, ten'ts, and other hereditam'ts, with their app'ten'nces, w'ch yo'r Highnes now hath or had, or nowe be, might or ought to be entitled to have by reason of the seid sev'all attaindo'rs, or any of them, upon any office therof founde or to be founde; and also all the seid Castles, Hono'rs, Mano'rs, lands, ten'ts, rents, rev'c'ons, serv's, and hereditam'ts, w'ch yo'r Highnes have given, dimised, exchaunged, or graunted, as is aforesaid, shall stande, remayne, and contynue in the same estate, force, degre, and condic'on, as they and ev'y of them were in before the making of this Act, and as though this Act had nev'r byn had or made. Saving to all and ev'y other p'son and p'sons, bodies politick and corporate, their Heires and Successo'rs, and theires and Successo'rs of ev'y of them, all such Estate, Possession, Right, Title, Interest, Rev'c'on, Remaindo'r, Entre, Lease and Leases, Clayme, Condic'on, Terme of Yeres, Suits, Rents, Comons, and all other p'ffits and com'o-dities, as they have or ought to have in and to the p'misses, or any p't or p'cell therof, as though this Acte had nev'r byn had ne made. Provided also, that this Acte extend not ne be p'iudic'all to yo'r seid humble subiects for or concerning any Mano'rs, lands, ten'ts, or hereditam'ts, w'ch yo'r seid subiects, or any of them, have or hath of yo'r Highness bountifull lib'alytie and gifte, or of the

<sup>1</sup> The Bill was introduced into the House of Lords and read a first time on the 7th February, 1558, and a second time the next day. It was returned from the Commons on the 14th February, with "a request that the words, *videlicet*, '[To any name of honour or dignity, or]' might be put in, in the 37th line, after these words 'their heirs;]' whereunto it was, by the whole consent of the Lords, agreed."  
—*Lords' Journals*, vol. i. pp. 520, 521. 523.

gifte of any other, by any good, lawfull, or p'fect feoffam't, gifte, assura'nce, or other conveyance to them, or any of them, had or made, but that the same assuraunc's and gifts shall stand, remaine, and be of like force, valedite and effect, as they were before the making of this Act. And yo'r most humble subiects according to their most bounden duties, shall dayly pray to God for yo'r most noble Highnes in hono' and felicitie longe to contynue and reigne.

To prove that at the death of Ambrose Dudley, afterwards Baron l'Isle and Earl of Warwick, named in that act, on the 21st of February, 33 Eliz. 1590, the said Katherine, then Countess of Huntingdon, his sole surviving sister, and Elizabeth Sydney, only daughter and heir of Sir Philip Sydney, Knt. deceased, the eldest son and heir of the said Lady Mary Sydney, then deceased, were co-heiresses of the said earl, and consequently co-heirs of his father John Dudley, Duke of Northumberland, the inquisition taken on the Earl of Warwick's decease, in the 33rd of Eliz. was produced. The inquisition of the 10th of James the First, after the death of Elizabeth Sydney above-mentioned, who was then Countess of Rutland, was read to show that she died without issue on the 1st of September, 1612, and that her uncle, Robert Sydney, Viscount l'Isle and Lord Sydney of Penshurst, was her uncle and next heir, namely, son of Sir Henry Sydney, Knight of the Garter, father of Sir Philip Sydney, Knt., father of the said Elizabeth Countess of Rutland. That the said Robert Sydney, Viscount l'Isle, who was afterwards created Earl of Leicester, died on the 13th of July, 1629, and that he left Robert Sydney his eldest son, his heir, who thereupon became Earl of Leicester, was proved by the inquisition on the said earl's decease.

To prove that the before-mentioned Elizabeth, the wife successively of Edmund Dudley and Sir Arthur Plantagenet, left John Dudley, afterwards Duke of Northumberland, her eldest son and heir; and that Ambrose Dudley, Earl of



Warwick, survived all his brothers and became heir of his father, and in further proof of the matter which the inquisitions of the 33rd of Queen Elizabeth, and 12 Jac. I. had been adduced to establish, an ancient pedigree found among the family muniments of the petitioner at Penshurst was produced. A deed was likewise produced from the same place, by which lands were settled after and in consideration of the marriage between Sir Henry Sydney and the Lady Mary Dudley, as evidence confirmatory of that pedigree. A copy of the inscription on the tomb of Ambrose Dudley Earl of Warwick, and of that on the tomb of Robert, son of Robert Dudley Earl of Leicester, (brother of the said Earl of Warwick,) and of one to prove that the Countess of Huntingdon, sister of Ambrose Earl of Warwick, died without issue on the 2nd of May, 1620, aged 72, were next produced, in further confirmation of that part of the pedigree; and the witness was asked,

*Quest.*—(*By a lord.*)—You have produced copies of two inscriptions in the chapel at Warwick, are those the only inscriptions relating to this family?

*Ans.*—There are other tombs in the chapel, but I only took those on the tombs of Ambrose Earl of Warwick, and the infant son of the Earl of Leicester, Robert Dudley.

*Q.*—Did you take the inscription on the tomb of a lady called Duchess Dudley, which represents her as the wife of Robert Dudley Earl of Leicester, and as having two daughters.

*A.*—I did not.

*Lord Redesdale.*—It is very important that you should have that inscription, for there was a person who assumed to be son of Robert Dudley Earl of Leicester; and he was created Duke of Northumberland by the Grand Duke of Tuscany, and his wife was created Duchess Dudley here, and she had two daughters: and it is a material question whether that person who was so created Duke of Northum-

berland abroad was or was not the son of Robert Dudley Earl of Leicester.

*Mr. Shadwell.*—My lords, my client informs me that the original papers which relate to a suit which arose on the subject your lordship has mentioned exist, and which suit I understand continued about 200 years—whether it was usefully terminated or not remains to be determined.

*Lord Redesdale.*—It is very material the House should be informed upon that subject, and whether there are descendants of that person now living.

*Mr. Shadwell.*—Your lordships will find on one of the inquisitions, that on the death of Ambrose Earl of Warwick, there is a negative to that statement.

*Lord Redesdale.*—We know that inquisitions are far from being decisive. In the claim of peerage of Lord Powis there were two inquisitions produced expressly contradicting each other, and the question was, which of them was the true and which the false inquisition, which never was decided. The title of Lord Powis depends to this day upon that question, which is the true inquisition and which is the false.

*Mr. Shadwell.*—By the time your lordships meet again we shall be able to give precise information upon these subjects.

*Mr. Hart.*—We can inform your lordships that Sir John Sidney at this time holds lands and rights of patronage and other matters of that kind, to which he deduces his title from that earl.

*Lord Redesdale.*—That will be very material to be produced; the misfortune in these cases is, that there are very active agents on the part of the claimant, and that there is not the same activity the other way.

Entries in the Journals of the House of Lords were produced to prove that Robert Sydney, first Earl of Leicester of that name, left Philip Sydney 2nd Earl of Leicester, his eldest son and heir; that Philip Sydney 2nd earl left Robert

Sydney 3rd earl his son and heir; that Robert Sydney 3rd earl left Philip 4th earl his son and heir at law, and two other sons John and Jocelyne, who successively enjoyed their father's titles of honour.

A copy of the inscription on the tomb of Philip Sidney 5th Earl of Leicester, in the church of Penshurst, to prove, in corroboration of the foregoing evidence, that Robert Sidney 4th Earl of Leicester above-named, was the [great] grandson and heir of Robert Sidney 1st Earl of Leicester of that name; and also to prove that Dame Mary Sidney Sherard and Mrs. Elizabeth Perry, daughters and co-heiresses of Colonel Thomas Sidney, third surviving son of Robert 4th earl, became, after the deceases of Philip Sidney 5th Earl of Leicester, who was the eldest surviving son of Robert 4th earl, and of John Sidney 6th Earl of Leicester, who was his second surviving son, co-heiresses of the body of Robert 4th earl; and that Jocelyne Sidney 7th Earl of Leicester, the youngest son of Robert 4th earl, also died without issue.

The will of Henry Sidney Earl of Romney, dated 12th April, 1699, to prove that he there mentions his nephew Thomas Sidney, third son of his brother Robert Earl of Leicester; and the will of Lady Mary Sherard dated 13th April, 1758, to show that she described herself as " Dame Mary Sidney Sherard, widow and relict of Sir Brownlow Sherard, late of Lobthorp in the county of Lincoln, Baronet, deceased, and one of the two nieces and co-heirs of the Right Honourable Jocelyne late Earl of Leicester deceased," were next produced.

The births of the above-mentioned daughters and co-heiresses of the Honourable Thomas Sidney were proved by parish registers; and the facts that Lady Sherard the elder of them married Sir Brownlow Sherard, Baronet, and died without issue; that her sister Elizabeth married William

Perry of Turville in the county of Bucks, Esquire, in the year 1738, and died in September, 1783; that they had issue one son and four daughters; that all their children excepting Elizabeth Jane Sidney Perry died without issue; that the said Elizabeth Jane Sidney Perry married Bysshe Shelley, Esquire, on the 17th of August, 1769, and died in May, 1781; that the Petitioner, Sir John Shelley Sidney,<sup>1</sup> was the eldest son of that marriage; and that he was baptized on the 18th December, 1771, were proved by a monumental inscription, by marriage settlements, family deeds, wills, parish registers, and by the testimony of servants of the petitioner's family.

*Mr. Shadwell and Mr. Hart.*—We have now, my lords, closed our evidence for the present; there may be one or two more registers which it may be necessary for us to put in at a future time. We apprehend your lordships do not require, in this case, that we should prove the pedigree of other branches of the family which diverge from us. We have given your lordships all the information we are possessed of on the subject, and have proved that we are the co-heirs at the period when we allege ourselves to have been the eldest co-heir of the body; and having deduced our own pedigree with a certainty which we hope will be satisfactory to your lordships, we go on to the other branches with such *prima facie* evidence as is within our competence, of who are the persons deriving from the other two branches.

*Lord Redesdale.*—You are not bound to prove any thing about Elianor and Elizabeth, the two younger daughters of Elizabeth de l'Isle, wife of the Earl of Warwick.

*Mr. Hart.*—That is what we submit to your lordships.

*Lord Redesdale.*—You do not, of course, pretend to say that they died without issue.

<sup>1</sup> It may be useful to add, to avoid confusion of names, that the Petitioner assumed the name and arms of SIDNEY by royal license.

*Mr. Hart.*—No; we say that they died with issue, and we give such *prima facie* evidence as is in our power, who are the persons who ought, as such, to have notice of this proceeding.

*Lord Redesdale.*—That appears to be all you are called upon to do.

*Mr. Hart.*—We do not understand whether it is the pleasure of your lordship on the adjournment of this case, to fix any time in the ensuing session against which we should give notice to the other parties to attend.

*Earl of Shaftesbury.*—We cannot fix a day; you will give them notice that the case is adjourned to the next session of parliament, and they must by their agents attend to see when the lords appoint it.

*Mr. Hart.*—And there must be personal service on those who are abroad.

*Earl of Shaftesbury.*—Just so.

Adjourned *sine die*.

*Monday, 6th June, 1825.*

MR. HART, Mr. Shadwell, and Mr. Fitzroy Kelly appeared as counsel for the petitioner. Witnesses were called to prove the service of notices to the other co-heirs;<sup>1</sup> and the following evidence was adduced to show that Robert Dudley Earl of Leicester died without legitimate issue. First: The earl's will, written with his own hand, and dated 1st August, 1587, in which he repeatedly mentions "my base sonne" Robert Dudley, and never alludes to him by any other description, and bequeaths lands to his brother the Earl of Warwick, as "my right and lawfull heyre;" which document also corroborates many other statements in the petitioner's pedigree. Secondly: Proofs that the right of presentation to the hospital at Warwick, by the deed by which it was founded, was given, after the earl's death, to his heirs; and that the petitioner and those through whom he claimed, had uniformly exercised the right of presentation to that hospital from the earl's death to November, 1823, the date of the last presentation.

Copies of inscriptions on the tombs, of Richard Beauchamp Earl of Warwick, who died in 1439; of Robert Earl of Leicester, who died in 1587; of Ambrose Earl of Warwick, who died in 1589; of Lettice, Countess of Leicester, who died in 1634; of Robert, son and heir apparent of Robert Earl of Leicester, who died a child in 1584; and of an inscription, commemorating Katharine, widow of Sir Richard Leveson, Knight of the Bath, "one the daughters and co-

<sup>1</sup> In the Committee on the 16th of June, Mr. Abercrombie stated that he was instructed to appear on behalf of Sir Henry Hunloke, Bart., one of the coheirs, who was a minor, and to submit his interests to the decision of the House.

heirs of Sir Robert Dudley, Knt., son to Robert late Earl of Leicester, by Alicia his wife, daughter to Sir Thomas Leigh, of Stonley, Knt. and Bart., (created Dutchess Dudley by King Charles the First, in regard that her said husband leaving this realm had the title of a Duke conferred upon him by Ferdinand II., Emperor of Germany,") who left a legacy for the preservation of the monuments in the chapel of our Lady in St. Mary's Church at Warwick, were then read. An extract from the copy of the will of Ambrose Dudley, Earl of Warwick, dated January, 1589-90, was tendered, when a discussion arose about the original document,<sup>1</sup> and counsel were directed to ascertain whether some cases had not occurred of the books having been received in evidence in consequence of the custom of delivering out the wills to the executors.

Adjourned to Monday, 13th June.

*Monday, 13th June, 1825.*

*Mr. Hart.*—"On a former occasion we laid before your lordships what we conceived to be all the evidence in this case on the part of the petitioner, but since we last had the honour of addressing you, it has occurred to us there is a portion of evidence arising from a record, material to be ob-

<sup>1</sup> The witness, a clerk in the Prerogative Office, who produced that extract, stated in reply to questions by the Attorney and Solicitor General and Mr. Shadwell, that it was the custom of that office at the time that will was proved, to deliver back to the executors the wills when they had been proved and registered, and which was done in nine cases out of ten; that he found by searching, that all the wills of that year were not delivered back; that the practice of not delivering back the original wills commenced "within the last century or so;" that it was the custom of the office to bind the registers and to give them the name of some great man who died within the period embraced by them respectively; that he knew it was the practice at that time to return the original wills, because he had seen several receipts "received back such a will;" that those receipts were in the office; that perhaps there might have been a receipt book at that time for them; and that the oldest entry in any book of any register of wills is about 1308.

served upon in the course of the argument, and we therefore ask permission of the House to introduce it now by the proper officer."

A Roll of Parliament of the 5th year of Richard the Second, of which the following is a copy, was read.

"Fait a remembrer q̄ au p'lement tenuz a Westm̄, lendemain de Johan Portlatyn q̄ fuist Meskardy & le vij<sup>me</sup> jour de Maii lan du regne nr̄e S<sup>r</sup> le Roi dessusdit quint; N<sup>r</sup>e dit S<sup>r</sup> le Roi estoit venuz en sa p'son a dit p'lement & pluso's P'latz S's & aut's qavoient la somonce de p'lement mais pur tant q' aucuns des viscontz des countees de roialme navoient mye reto'nirs lours briefs de p'lement et auxint g<sup>nt</sup> p'tie des P'lats & S's qavoient mesme la somonce nestoient mye encores venuz, si ne fuist mye la cause del somonce de ce p'lement monstrez a celle Meskardy einz fust mesme le p'lement del cōmandement le Roi estoit adjo'nez tanq' al Joefdy p'ch' ensuant & de ce p'clamation faite en la sale de Westm̄, comandant a ycelle p'clamation a touz qavoient la dite somonce q' s' le p'il qappent ils y fussent le dit Joefdy p' temps pur oier les causes dessusdc̄es.

A quel lendemain si revint en p'lement sib'n nr̄e S<sup>r</sup> le Roi come les p'latz duc contes barons & aut's qavoient la dite somonce & illoeq's en la chambre depeintee appelez la einz p'im'ement p' lours nouns les chivalers des countees citezeins des citees & burgeys de burgh's reto'nez p' cest p'lement Mons' Richard Lescrop chivaler chancellor Denglet're del comandement le Roi avoit les p'oles dep' le Roi pur exposer & monstrier illoeq's les causes de la somonce de cest p'lement, et dist S's & S's, il nest mye disconue chose a la greindre p'tie de vous coment al derrain p'lement estoit g<sup>ntez</sup> a nr̄e S<sup>r</sup> le Roi le subside des leynes &c. a durer p' quatre ans & demy al entente q̄ p' aucun g<sup>nt</sup> viage affaire en defens du roialme selonc l'ordinance & bon advis de nr̄e dit S<sup>r</sup> le Roi & des S's home purroit de ce subside faire chevance suffisante de monie come feust p'mis destre fait si l'enbusoignerait," &c.

The copy of the will of Ambrose Dudley, Earl of Warwick, dated 28th January, 1589-90, was read from the regis-



ter in which it is recorded, in confirmation of the petitioner's pedigree, as he describes his sister the Countess of Huntingdon, and his little niece Elizabeth the daughter and heir of his late nephew Sir Philip Sydney to be his "next heires in bloode," and takes no notice whatever of Robert Dudley the putative son of his brother Robert Earl of Leicester, who, if legitimate, would have been his heir at law.

*Mr. Hart* then proceeded to sum up the evidence in support of the case of the petitioner.

"My Lords, the evidence on the part of the petitioner we consider as completed, and according to the case we propose to sustain before your lordships it is this, that a barony in fee was vested by writ of summons, and by sitting under that writ of summons in your lordships' House, descendable to the heirs of the body in general, and that a person of the name of Warine de l'Isle was summoned and sat in various parliaments during the latter period of the reign of King Edward the Third, and during the early part of the reign of King Richard the Second. We propose to show, that in the sixth year of the reign of King Richard the said Warine de l'Isle died without issue male, leaving a daughter, in whom, according to our proposition, the barony in fee vested. I shall then go on to satisfy your lordship, as I trust, that there were very good reasons why that barony in fee-simple, as it stood by descent in the only daughter of Warine de l'Isle, was not taken up by her husband, and by those who immediately succeeded that husband; and that the title has with great anxiety and great care been from time to time kept alive through the bounty and protection of the Crown in various individuals under various forms. The first proposition that I am bound to make out is, that Warine de l'Isle was a peer of parliament, and sat in this House as such during his life, and another proposition which it will be necessary for me to establish by authority, if

it is not already so often established as to become a sort of axiom in the rules of your lordship's House is, that the summons and the sitting under it created a barony in fee.

"The first proposition, namely, that Warine de l'Isle did receive summons to parliament, must be proved undoubtedly by early records which exist, for the evidence can exist only as matter of record. Your lordships will find, by referring to the evidence, that Gerard de l'Isle, who died in the 31st year of Edward the Third, had in his time summons to parliament, but whether that summons to parliament did or did not in its consequences establish a title to a barony in fee, I do not at present trouble your lordships with; because if it were possible to establish that title by a right paramount, the title of his eldest son would not be worse for showing to your lordships that it might have existed at an earlier period; we are content, therefore, to take up the root of our title from Warine de l'Isle, and to show that there existed in him that barony.<sup>1</sup>

"Warine de l'Isle, your lordships will find by the evidence, received summons to parliament in the 43rd year of the reign of King Edward the Third: he continued to receive summons to parliament through a succession of annual parliaments, as they were then habitually holden, from the 43rd year of Edward the Third successively during all<sup>2</sup> the parliaments that were held in the reign of that monarch, and

<sup>1</sup> According to the decision in the Botetourt and other cases, it would have been sufficient to have shown proofs of summons and sitting of the second baron to have established the date of the barony from the first writ addressed to his father. The precedence of the barony of Roos, for example, is the 49th Hen. III., though no proof of sitting of a Lord Roos of Hamlake, can be found on the Rolls of Parliament until that of Thomas, 5th Lord Roos, great-grandson of the first baron, in the 37th Edw. III. William de Roos, the second baron, was however summoned to, and sat in, the parliament at Lincoln, in the 29th Edw. I.; but this fact was not adduced in the claim to that barony before the House in 1806.

<sup>2</sup> He was not summoned in the 50th Edw. III. See page 6.

from the 1st year of King Richard the Second he received writs of summons up to and including the parliaments that were holden in the 5th of Richard the Second; and it appears that he died in the 6th of Richard the Second, before any other parliament was summoned or holden.

“ That a writ of that description, followed up by the fact of the party sitting in parliament, does give a barony in fee, I think I need not now argue; for that would be a waste of your lordships’ time after the repeated recognitions in this House that such a condition of any individual ennobled his blood and gave him a transmissible dignity, with title to sit in this House. I take it for granted, it will not be disputed, that such a writ is evidence of title in its inception; but I admit that must be followed up by evidence that the party so summoned did sit in parliament as a peer of parliament.

“ It is not my intention to enter into a subject that may seem to have been rendered something equivocal by a decision of your lordships’ House in the Freschville Peerage: where it appears to have been rendered matter of doubt whether one summons or evidence of one sitting was sufficient to give a barony in fee, or whether there must not be a repetition of that summons; that is a question which seems to have been left in doubt by the mode in which Lord Freschville’s case<sup>1</sup> was disposed of, which has travelled into books of great authority, and there is nothing setting at rest the doubt whether a single summons and a single sitting was sufficient to constitute evidence of a transmissible dignity. I do not think it necessary to mix the proceedings in this case with that as an authority; because if we make out by the evidence, which we presume will be satisfactory, that there was a sitting of Warine de l’Isle, it is an inevitable inference

<sup>1</sup> The Freschville case will be fully stated in a subsequent page.

from that same body of evidence, that there must have been repeated and continuous sittings by the same Warine de l'Isle.

“ Taking for granted, therefore, that the writ of summons sufficiently proves the foundation of the title, and that it is only necessary to add to that foundation evidence of the fact of sitting, the next question will be in what way we are to satisfy your lordships that Warine de l'Isle did in fact take his seat and acquire dignity as a lord of parliament. I am induced to call your lordships' attention to this point, because one sees in books of great authority, now considered as governing the law upon this subject, the species of proposition laid down, that introduces in this case what may be considered as a difficulty; namely, admitting it to be absolutely necessary to prove the inception of the title, by the production of a writ of summons, because that is matter of record in which the title originates, yet by what mode we are to prove the fact of sitting, as consequential upon that writ of summons, taking the passages as they are laid down in my Lord Coke and in other great authorities in the law, who have followed and amplified the proposition, so as to introduce a degree of obscurity upon the subject. They laid it down first as an insulated proposition, that to create a title by prescription as it is called, or by writ, which presumes a grant of the crown to sustain a title of that description, there must be evidence of summons and sitting.

“ In other cases it is laid down that the proof of peer of parliament or not, must be by matter of record. Combining these two together, it may seem to follow as a consequence of that which is laid down by the books, not only that the issuing of the writ of summons must be proved by matter of record, that is by the writ itself, which is the record, but likewise that the sitting must equally be proved by matter of record; and undoubtedly that which has gone into those

books appears to be stated as the rule that the individual title to the barony must be proved by matter of record, not only *qua* the original summons, but *qua* the sitting, which is to be consequential to perfect the title; and that doubt has been in some measure, perhaps, raised by the circumstance of its being laid down by my Lord Coke, that the writ of summons is not *per se* sufficient to prove the existence of a barony in fee, because to constitute the character of a peer of parliament, the individual must not only have been summoned to, but have taken his seat as, a peer of parliament in your lordships' House;<sup>1</sup> and the book goes on to follow it as the consequence, that the writ of summons does not prove the fact of sitting as consequential upon the summons itself, because many circumstances may have intervened to prevent the person so summoned from taking his place as a peer of parliament, such as a supersedeas of the writ, the death of the party, or other circumstances which might have intervened between the return of the writ and the meeting of par-

<sup>1</sup> Lord Coke's words are, "A man may have an inheritance in title of nobility and dignity three manner of ways, that is to say, by creation, by descent, and by prescription. By creation two manner of ordinary ways, (for I will not speak of a creation by parliament,) by writ and by letters patent. Creation by writ is the antienter way; and here it is to be observed that a man shall gain an inheritance by writ." "Before the 10th October, 11 Ric. II. there never was any baron created by letters patent, but by writ; and it is to be observed, that if he be generally called by writ to the parliament, he hath a fee-simple in the barony without any words of inheritance." "If a man be called by writ to the parliament, and the writ is delivered unto him, and he dieth before he cometh and sits in parliament; whether he was a baron or no? And it is to be answered that he was no baron, for the direction and delivery of the writ to him maketh not him noble." "The writ hath no operation or effect until he sit in parliament: and thereby his blood is ennobled to him and his heirs lineal, and thereupon a baron is called a peer of parliament; and if issue be joined in any action, whether he be a baron, &c. or no, it shall not be tried by jury, but by the record of parliament, which could not appear unless he were of the parliament." "The word *heirs* is not necessary to a creation of nobility by writ; for when a man is called to the Upper house of Parliament by writ, he is a baron and hath inheritance therein, without the word *heirs*." Co. Litt. 16 b.—9 b.

liament, and that appears to have travelled into some *dicta* in books of inferior authority that both the writ of summons and the sitting in parliament must be by matter of record.

“ I take the liberty of stating that that never has been decided distinctly, and that it could not be decided, because it would be repugnant to the good sense of courts of judicature, and peculiarly to the system of reasoning on which your lordships always act, to require that should be done which cannot be done. The writ of summons is capable of being proved by matter of record, as I have stated, because it is the record itself; but there is no record as the record of the individuals who constitute the members of your lordships’ House, as members sitting in parliament: there is no record of that description, and at periods from the remotest time at all periods anterior to the reign of King Henry the Eighth. There is no medium through which the fact of sitting at a particular time as a peer in parliament can be proved by any thing that has even the colour of being denominated a record of parliament. Many records exist which, reciting a fact, are of themselves evidence of that fact, but they are not records of the fact; and it will be found in the proceedings of this House there is not any record of any description which may be technically considered as a diary of your lordships’ sittings anterior to the reign of King Henry the Eighth<sup>1</sup>. In that reign a course took place of preserving

<sup>1</sup> The Journals of the House of Lords commence in the 1st year of King Henry the Eighth, but those from the 7th to the 25th years of that reign, both inclusive, have been lost. Anterior to the accession of that monarch, the Rolls of Parliament are the only parliamentary records, but in these there is no regular list of the peers who took their seats, and the only proofs of peers having been present in parliament are notices that they were selected as Triers of Petitions, as having witnessed a certain transaction, or as having been appointed mainpernors or bail for persons accused in parliament of great offences. A proof of sitting before the 1st Hen. VIII. depends, therefore, on mere accident; and the absence of such proof on the Rolls, especially from the reign of Edw. I. to that of Hen. IV. is by no means conclusive evidence that a peer of whose attendance in parliament no such proof can be found,

**Journals** of your lordships' proceedings, and in those Journals, from time to time, down to the present day, the names of those who sat in parliament undoubtedly are recorded. Those Journals may be used as evidence of the fact whether peers of parliament sat at that period, but that is not, technically speaking, a record in the sense that Lord Coke and other great authors used the term record: it is certainly a memorial preserved of what passed in your lordships' House, and preserved under such circumstances of care and solemnity, and so guarded by the integrity of your lordships' officers, that there can be no doubt of the truth of the fact entered on your lordships' Journals, and you, therefore, adopt any entry in your Journal as evidence of the fact just as conclusively as if the fact had been proved by any other species of parol evidence. But it has been stated by the highest authorities in judicature, distinguishing what I am now endeavouring to impress upon your lordships' minds, namely, the distinction between a record as matter of record against which there is no averment and against which no evidence can be received of the fact recorded, and that species of evidence which is a mere fact capable of being proved by the production of a record in itself evidence not capable of being itself proved by any other evidence credible and capable of making out the fact. I am bold to state this to your lordships, wishing to clear the way to that species of evidence I am about to state to your lordships as to the fact of sitting of Warine de l'Isle, who is to be considered as the root or *stirps* of the present application.

“ I should submit, that considering the state of this House

was never present. It would, however, exceed the limits of a note to state the arguments which might be urged against the rule laid down by the House with respect to proofs of sittings anterior to the 1st Hen. VIII.; but the subject will be again alluded to.

and this country at the period I am speaking of, a succession of writs of summons much less frequent than we have here before your lordships, namely, fifteen, would raise such legal presumption that in some or most, if not in all, of those writs of summons the party summoned had in point of fact taken his seat and exercised his functions as a lord of parliament, that that presumption alone would be sufficient when it is considered that the power of entering the House as a peer of parliament was stopped by his death, and that there is no record to show what was done with reference to his life, as to his taking his seat other than as presumption arises from the state of parliament at that time. In the then state of society in this country, the attendance in your lordships' House, although it conferred great dignity, and great importance on the individuals, was nevertheless considered as extremely burthensome to many of the persons who were bound to give their attendance in parliament, that it was a duty frequently performed with great reluctance and frequently avoided where it was permitted to be avoided; and if I am right in stating that to such an extent the objection had gone that peers of parliament bound to attend and summoned to attend, could not, without subjecting themselves to fines and other penal consequences, avoid the attendance except by a good and proper excuse, if that were the case and your lordships find through a succession of sixteen or eighteen years this Warine de l'Isle was uniformly summoned, and that there appears no record of any delinquency on his part upon the Rolls of Parliament, I think the consequence in reasoning is inevitable, that he had been guilty of no default, and that he had in fact attended his duty in parliament.<sup>1</sup>

<sup>1</sup> A strong argument might have been used in favour of the presumption that Warine de l'Isle did sit in parliament, arising from the following comparative table



“ The language of the writ of summons upon this subject is

showing the number of Barons summoned on the same occasions as Warine de l'Isle, and the number who are recorded on the Rolls to have been present.

Date of Writs.	Summoned.	Attended.
43 Edw. III. ....	35	Five.
44 ——— .....	51	Seven.
46 ——— .....	35	Six.
47 ——— .....	33	Six.
49 ——— 28th Oct.	38	Prorogued.
20th Jan.	40	Nineteen.—One of these barons was not summoned after the 46th Edw. III. until 1 Ric. II., and six of the others were not summoned to that parliament.
1 Ric. II. ....	47	Twelve.
2 ——— .... 3rd Sept.	47	Nine.—One of these barons was not summoned between 50 Edw. III. and 5 Ric. II.
——— .. 16th Feb.	47	Eight.
3 ——— .....	47	Six. Ditto.
4 ——— .....	36	Six.
5 ——— .... July	47	Prorogued.
——— .... August	47	Ten.
——— .... March	44	Five.

If, therefore, it were to be considered that no peers attended but such as are noticed on the Rolls of Parliament, we should be obliged to conclude that on six occasions, when from thirty-three to forty-seven barons were imperatively commanded to attend parliament, not more than a fifth in one case, and not above an eighth in others, thought proper to obey the summons; and that on no occasion did half the baronage comply with their sovereign's mandate,—an inference which cannot for a moment be supposed correct, especially when the following comparative statement of the summonses and attendances of the earls and the only duke, on the same occasions is considered.

Date of Writs.	Summoned.		Attended.	
	Dukes.	Earls.	Dukes.	Earls.
43 Edw. III. ....	1	11	1	8
44 ——— .....	—	12	—	10
46 ——— .....	1	9	—	8
47 ——— .....	—	6	—	4
49 ——— .. 20th Jan.	1	7	—	7
1 Ric. II. ....	1	12	1	10
2 ——— .... 3rd Sept.	1	14	1	9
——— .. 16th Feb.	1	14	1	9
3 ——— .....	1	13	1	7
4 ——— .....	1	9	1	6
5 ——— .... August	1	10	1	7
——— .... March	1	9	1	6

Thus, in the instance when nine out of the twelve earls and duke summoned are

important for your lordships to look at: the writ is always conceived in the same form, and it shows how imperatively the parties to whom it was addressed were directed not to make default in their duty of attendance. After reciting as usual the purpose and the intent of summoning to parliament, the writ goes on, after stating the use for which the parliament was holden, namely, to receive the advice and counsel of prelates and barons of the realm, it is stated, 'We command you firmly, enjoining you in the faith and love by which ye are bound to us, considering the arduousness and imminent peril of the business; and putting aside every excuse, you personally attend on the said day and place with us and with the rest of the prelates, great men aforesaid, to treat and your counsel to give upon the business aforesaid. And this as you regard us and our honour, and the salvation of our kingdom aforesaid, and of the Holy Church, and the despatch of the said business, you in no wise omit, lest which happen not, by your absence, which unless you shall then be by such infirmity detained that in any wise you cannot come there, we will in no manner excuse.' So imperative was this obligation, this writ upon the peer summoned, that your lordships will find frequent notices in the Rolls of

stated to have attended, only five out of the thirty-five barons summoned are recorded on the rolls to have been present; and on another, when only twelve out of the forty-seven barons summoned, are so recorded, no less than eleven out of the thirteen earls and duke summoned were triers of petitions in parliament, whilst on every occasion more than two-thirds of the earls and the one duke who were summoned attended. The only conclusion that can possibly be drawn from these facts is, that the attendance of the barons was no less uniform; but as the triers of petitions in each parliament consisted, besides spiritual peers, generally of eight or ten earls and six or seven barons, and as the whole body of the former never exceeded fourteen, whilst the latter amounted to about fifty, nearly all the earls were of course selected for that duty, and are consequently recorded to have been present. The same observation applies to bishops and abbots, many of whom were also appointed triers of petitions; and the presence in parliament of the spiritual peers, may, from the paucity of their numbers be easily proved.

Parliament of persons who, being summoned, were fined for not attending their duty as peers.<sup>1</sup>

<sup>1</sup> That fines were imposed on peers for non-attendance in early periods, is manifest from the statute 5 Ric. II. cap. iv., by which it is provided, that all persons who may be summoned to parliament shall come from henceforth to the parliaments in the manner as they are bound to do, and have been accustomed within the realm of England of old times; and if any person, be he archbishop, bishop, abbot, prior, duke, earl, baron, banneret, knight of the shire, citizen of city, burgess of borough, or other singular person or commonalty, do absent himself, and come not at the said summons, (except he may reasonably and honestly excuse him to our lord the king) he shall be amerced and otherwise punished, according as of old times hath been used to be done within the said realm in the said case."—*Rot. Parl.* vol. iii. p. 124.

In writs addressed to William Lord Dacre and six other barons, tested 20th March, 11 Ric. II. it is said, that they had been summoned to a parliament at Westminster on the morrow of the Purification last past, but that they did not attend "*in nostri contemptum manifestum*;" that the said parliament would be continued until Monday the morrow of the quindesme of Easter next following, which they were commanded to attend, and not to depart without the king's special license, upon pain of such penalty as the king and lords in that parliament might inflict.—*Appendix No. I. to the Lords' First Report on the Dignity of a Peer of the Realm*, p. 729. *Clause Roll* in dorso, m. 13, whence, as Prynne in his *Brief Register of Parliamentary Writs*, p. 196, observes, "it appears the not appearing in parliament upon the first writ through negligence, wilfulness, or without lawful excuse made for it, is a manifest contempt to the king; that a peer so summoned could not leave the parliament without a special license; and that the non-appearance of any peer when summoned, or his departure without leave, was punishable with such penalty as the lords then present thought proper to inflict." See also *Coke's Fourth Institute*, p. 44.

In the 32nd Hen. VI. an. 1454, it was enacted, that in consequence of many lords not having attended pursuant to their writs, they should pay the following sums to the king's use; viz. Archbishops and dukes £100; bishops, earls, 100 marks; and abbots and barons £40; to be levied on their lands and goods by process out of the king's exchequer. The fine of four bishops was mitigated to £20; peers, who were prevented from attending by "febleness or sickness," upon proof of the same before the council, were excepted from its effects, together with the Duke of Somerset and Lord Cobham, they being in prison; Lord Rivers, Lord Welles, and Lord Molines, they being in the king's service abroad; and the Lords St. Amand and Beauchamp, they being about the king's person in the time of his infirmity. The fines to be thus levied were to be applied to the safeguard of the town of Calais and the castle of Guisnes.—*Rot. Parl.* vol. v. p. 248. The Abbot of Bury was exonerated from the effects of that act, because he "was elect abbot of Bury after the said parliament somond, and hadde never writt of parlement, ne was nather somond ne called to the said parlement."—*Ibid.* p. 335. Of the strictness with which attendance was expected, we have proof from two entries on the *Rolls*, the one in the 18th Edw. III., and the other in the 6th Ric. II. From the former it appears, that certain prelates having disobeyed writs commanding them to attend a convocation, the king "se mer-

...very peculiar entry occurs upon the Rolls of ... which is this: that a very great man who had ... country, as it is alleged, greatly, at his own ... and that, as the King is there pleased to state ... received no remuneration for his services, has, as a ... of bounty conferred upon him by the Crown, liberty ... his attendance in Parliament, because it was burthen- ... and inconvenient to him to attend, and he desired that ... ;<sup>1</sup>—that, my lords, is an ingredient in the History

veill trop et aussint de ce qe les ditz Grantz\* ne furent pas venus a ce parlement au jour de somons, et se tient ent mal appaiez, et chargea l'Ercevesque [de Cantirbirs,] en priant q'il feist devers ceux de la Clergie de sa Province q' ne vindrent pas a la dite Convocation, et qi ne obeirent a son mandement, ce qe attient a lui: et le Roi feroit devers ceux qi ne vindrent pount a son parlement, ne obeirent a ses mandementz, ce qe attient a lui: et outre ce, meisme notre Seignur le Roi mercia molt as ceux qi vindrent as ditz convocation et parlement as primers jours."—*Rot. Parl.* vol. II. p. 146. In the speech of the chancellor at the opening of the parliament, Monday in the octaves of St. Michael, 6 Ric. II. he says, " Et le Roi vous comand qe vous retorniez demain par temps, pour avoir declaration en pluis especial manere sur les causes de la somonce avaut dite. Et en oultre, le Roi comande a touz q'avoient la dite somonce, q'ils viegnent de jour en aultre au dit parlement, et q'ils ne se absentent mye, ou departent d'ycelle, sanz especial coungie de lui, sur peril q'appent."—*Ibid.* vol. III. p. 133.

The Bishop of Winchester's case in the 3rd Edw. III., and some notices on the subject in, and after, the reign of Hen. VIII. in the Lords' Journals, will be cited in a subsequent note.

It will be shown in the next note that numerous instances are on record of parties having, as a mark of favour, received dispensations from attendance, which fact, coupled with the above, prove, that without such dispensation no peer dared to disobey a writ to parliament without incurring a heavy fine for his contempt, unless he was otherwise engaged in the king's service. As Warine de l'Isle was summoned by fourteen writs; as no less than eleven parliaments to which he was summoned actually met; as there is nothing to make it likely, that on either of these occasions he was elsewhere in the king's service; and as there is not the slightest trace of his delinquency, it is a fair presumption, amounting almost to a moral certainty, that on more than one, if not upon eleven occasions, he did actually sit in parliament.

<sup>1</sup> The instance alluded to is probably that of Lord la Warr, whom Dugdale, on the authority of the *Patent Rolls*, 21 Ric. II. p. 1, m. 1, says obtained a dispensation

\* It is not certain whether the words "le ditz Grantz" apply to the "Grantz Prelatz" only, or include the lay peers.

and in the constitution of your lordships' House, as it existed at that time, in support of the proposition which I have now

in that year from attending future parliaments as well as from serving in the field. Cases of this kind are very numerous, and as they strengthen the presumption, that no person summoned to parliament, dared to fail in his attendance, without he had received a special license for the purpose, unless he happened to be employed in the King's service out of the kingdom, some of the many examples will be cited. The case of the Bishop of Winchester, who, in the 2nd Edw. III., was ordered to be taken into custody by the Sheriff of Southampton for non-attendance, will, as has just been observed, be fully stated hereafter. In February, 21 Edw. III., 1347, Hugh Earl of Devon, at the request of his eldest son, and of William Earl of Northampton, was exempted from future attendance in parliament on account of his infirmities, provided he always sent his proxy, *Appendix No. 1 to the First Report of the Lords' Committees on the Dignity of a Peer of the Realm*, p. 561. In the 25th Edw. III. the Abbot of Leicester is said, in the writs of summons, to have received a charter from the King to prevent his being obliged to attend parliament, *Ibid.* pp. 591, 604. In April, 27th Edw. III. 1353, James Lord Audley obtained a similar dispensation from attendance in parliament and at councils for life, and also that he should not be compelled to serve in the King's army abroad; but in case of invasion or other danger to the realm, he was then to appear with his proper number of men at arms, hobblers, and archers, *Ibid.* p. 596; and Robert de Insula was excused from attendance in parliament, by patent 42 Edw. III. On the *Rolls of Parliament*, 7th & 8th Hen. IV., the Bishop of Exeter is said to have been excused from attending, for certain reasonable causes, vol. iii. p. 578. By patent, 24th Hen. VI. William Lord Lovell received a similar dispensation,—*Rot. Patent.* 24th Hen. VI. m. 19, p. 1. On the 18th June, 30th Hen. VI. 1452, Thomas Becketon, Bishop of Bath, obtained a license from the Crown to exempt him from attending parliament on account of his age and infirmities—*Fœdera*, vol. xi. p. 311, and Edward IV. granted him a similar indulgence in the first year of his reign, *Rot. Parl.* vol. vi. p. 227. Ralph Boteler Lord Sudley was also excused from attending on a similar plea, by patent, 1st Edw. IV. p. 3, m. 24: as was Lord Bromflete, both by Henry VI. and Edward IV., *Dugdale's Baronage*, tome ii. p. 234. It would, however, be useless to multiply instances. The *Lords' Journals*, which commence in the 1st Hen. VIII., also contain a great many notices of peers making excuses for non-attendance, and present a host of facts corroborative of the opinion that, in early times, attendance in parliament was enforced with extraordinary strictness, and of which, additional evidence will be adduced in a future page. A few examples will now be adverted to of the eagerness with which pretences were sought by spiritual peers, to avoid being compelled to attend parliaments, and which clearly establish, that that duty was formerly far from being a point of ambition. In the 15th Edw. III., the Abbot of Beaulieu stated in a petition to the King, that the Abbey did not hold its lands by Barony or of the Crown *in capite*, by which the Abbots ought to be summoned to parliament; and finding the allegation to be true, the Abbot and his successors were, by patent, exonerated from being summoned in future.—*Appendix No. 1 to the First Report of the Lords' Committees on the Dignity of a*

But in point of fact, a peer who was summoned to his place in parliament, must be presumed to have appeared to the duty, where no evidence to the contrary is

see *the Roll*, p. 533. In the same year, Thomas, Prior of Spalding, made a similar request, and he and his successors were also exempted, in consequence of his statement, and because he had paid twenty marks in aid of the King's wars in France, *Ibid.* p. 535. In the 9th Edw. III., the Abbot of Osney was exempted, because the lands of the Abbey were not held *per baroniam*, or *in capite*, *Ibid.* p. 554 ; but having been summoned to parliament in that year, a pen is drawn through his name in the writ, and these words are added, " Vac' q' idem Abbas h'et carta R' quod quiet' sit de sum' p'liament' et ideo cancellat'," *Ibid.* p. 559. The Abbot of St. Peter's of Gloucester, in the 26th Edw. III., obtained an exemption for life from personal attendance in parliament, " because of the special regard which the King felt for his church, in which the body of his father, King Edward II., was interred," *Ibid.* p. 593 : thus affording a striking proof of the great favor which such exemptions were considered. In the 38th Edw. III., the Prior of Lewes was excused from coming to the parliament of that year, because, on inspection of the Rolls of the Chancery, it appeared that the Priors of Lewes were never summoned before the 4th of Edw. I., *ibid.* p. 638. Though the Prior of Lewes was not summoned in the reign of Edw. I., he was summoned in the 49th Hen. III. *Ibid.* p. 34, and 1st & 2nd Edw. II., *Ibid.* pp. 173, 179, 188 : he does not appear to have been ever summoned after the 38th Edw. III. Many other cases of spiritual peers obtaining dispensations from attending parliament for life, and of Abbots proving that their houses did not hold their lands by barony, will be found in Prynne's *Brief Register of Parliamentary Writs*, pp. 121 to 152, 298, 299, &c. Prynne's *Animadversions on Lord Coke's Fourth Institute*, p. 32, *et seq.* and Selden's *Titles of Honor*, p. 605. Lord Coke asserts that such dispensations to peers are not legal, because " their service in parliament is for the whole realm, and for the benefit of the King and his people, of which service he cannot be exempted by any letters patent," *Fourth Institute*, p. 49 ; but Prynne ably controverts that opinion in his *Animadversions*, pp. 37, 38. In his *Brief Register*, p. 212, that most laborious writer observes : " If any barons or lords were in the lists of summons, and he was not actually summoned, there was a *vacat* in the roll, as in the *Clause Roll*, 11 Edw. III. m. 11 ; and if he died before the parliament met, his death was entered on the roll, as is the case with John de Clinton in the roll 9th Edw. III." There are many entries of this kind on the *Clause Rolls* opposite the names of barons in lists of summons. In the writ 11th Edw. III. the name of one baron has been erased, and opposite is written " Vac' q' nō fuit cons'," and in another list in the same year opposite two names " Vac' quia restit' fuit et alibi in obsequio R'," and in the 12th Edw. III., opposite one name, " Vac' quia restit' fuit ;" but the most satisfactory information of the excuses which were allowed for not attending parliament, is afforded by the list of peers summoned to the parliament at Carlisle, the 64th Edw. I., where two are said to have been excused by the King, and ~~one~~ because they were judges [of Trailbaston] ; one because he was in Scotland ; <sup>2</sup> would come, it was observed, with the cardinal ; and one would appear by ~~himself~~ <sup>himself</sup>. *Not. Parl.* vol. i. p. 188.

afforded by the records of this House ; because, not only is it a duty in itself which it is presumed every peer is inclined to perform, but a duty to the public and to the Crown, which, if he was guilty of the dereliction of it, would be followed by consequences of a penal description. I would therefore submit that the presumption arising from the continuous species and frequency of the writs of summons to Warine de l'Isle would, as to those writs of summons, be conclusive in law, as creating a sufficient presumption that in all or some of the anterior parliaments he had obeyed the writ, and had attended and taken his seat accordingly. But the period of the 5th of King Richard II. is an extremely important one with reference to our views of this case ; and the proceedings of those parliaments with reference to the evidence which we deem to be conclusive, that Warine de l'Isle had taken his seat as a lord of parliament, is deserving particular attention. In the 31st and 32nd of King Henry VI. there is a record of parliament of a fine upon many peers who absented themselves from parliament, having been duly summoned to attend the parliament ;<sup>1</sup> this is an instance corroborative of that general doctrine which I have taken the liberty to state, and which I think must be too familiar to your lordships as conversant with the proceedings of your own House, to render it necessary for me to accumulate authorities ; but that document in the 5th of King Richard II. appears to me important, as being evidence on record, that, in that year, Warine de l'Isle had taken his seat, and that it was not likely that a peer should have omitted to take his seat.

“ The writ of summons which is the first to which I shall call your lordships' attention, is the writ of summons that was issued on the 16th of July in the 5th year of King Richard the Second, and which summoned the various dig-

<sup>1</sup> See note, pp. 63, 64.

nitaries of the kingdom, beginning first with the prelates, and then going to the lay lords. In that writ your lordships will find that Warine de l'Isle is summoned as a peer of parliament, and certainly, with this distinguishing mark annexed to it, as connected with the subsequent cases, that he, Warine de l'Isle, is summoned in that list of the peers of parliament in a situation which shows that he had precedence over a great many barons, a great many peers of parliament of the same rank, and who have continued by their posterity to sit in this House<sup>1</sup>. Your lordships will find that in that case Warine de l'Isle is summoned in the early part of the names there, but I call your lordships' attention with submission to the situation in which he is there found in the list of peers, it being a recognised fact that the lords were always accustomed to be summoned and to have place in point of precedence among themselves, according to the antiquity of their titles to sit in parliament. Warine de l'Isle, in the first leaf of the summons tested the 16th of July in the 5th year of King Richard the Second, is introduced in the writ immediately after Thomas de Berkeley, who is there summoned also as a peer of parliament; and he is there introduced in the writ immediately preceding Henry Fitz Hugh, likewise appearing to be summoned to that parliament.

“That parliament was summoned to meet on the elevation of the Holy Cross, which would take place upon the 14th day of September, they are therefore summoned upon the

<sup>1</sup> See p. 7, where the position of Warine de l'Isle's name in each writ is pointed out, whence it is evident that the place where it occurs in the writ of July, 5 Ric. II. is not remarkable; and that very little stress can be laid on the place where names occur in writs of summons, excepting as it marks the degree of peerage the party enjoyed. It is manifest from every writ addressed to Warine de l'Isle that he was considered a baron of the realm, and summoned as such; but no certain deduction can be drawn from those documents as to the precedence he possessed. *See* note, p. 70.



16th of July to meet upon the 16th day of September<sup>1</sup>. Intervening circumstances seem to have rendered it inconvenient to hold the parliament at that day, and there issued another writ of summons, dated upon the 22nd of August in the same year, summoning the peers to attend that parliament upon the morrow of All Souls, which would be upon the 3rd of November. In the statement of this, as a record, I content myself with that proposition, very properly laid down by Lord Coke, that the mere summons to attend would not of itself have been proof of the title to sit in parliament, because the writ of summons might have been superseded, or various intervening accidents might prevent the party summoned from taking his place and seat as a peer of parliament; and in this writ of summons we find an adjournment, or in other words a supersedeas, of that first writ of parliament. Upon that writ it is technically expressed, as you would now express it, namely, that the king prorogues his parliament ordered to meet on the Monday after the feast of the Exaltation of the Holy Cross, and calls upon the peers to meet on the morrow of All Souls. The very term prorogation is used in the writ<sup>2</sup>.

“ It is important next to observe that in this writ of summons, or which may be called a writ of prorogation, as well as a new writ of summons, there is to be found the name of Warine de l'Isle, introduced among the list of peers recorded to have had similar writs issued to them; and we find him introduced precisely in the same rank in point of names, in which, we presume, if he entered the House,

<sup>1</sup> By the writs tested on the 16th July, 5 Ric. II. 1381, the parliament was ordered to assemble at Westminster, on Monday next after the feast of the Exaltation of the Holy Cross, namely, on Monday after September 14th, i. e. on Monday the 16th of September.

<sup>2</sup> “ Ex ceteris tamen et evidentibus causis nos et consilium nostrum specialiter moventibus, dictum parlamentum usque Crastinum Animarum prox' futurum duxim' prorogandum.”

he would take precedence of other peers in the House, namely, immediately succeeding Thomas de Berkeley, and immediately before Henry Fitz-Hugh<sup>1</sup>; and there is likewise another peculiarity which may perhaps deserve attention, that in this writ of prorogation, and second summons, the same individual peers are required to attend upon the morrow of All Souls who are named in the anterior writ—without either addition or diminution,—those individual peers are all summoned to meet upon that occasion.

“ We have laid before your lordships what passed when the parliament met upon that morrow of All Souls, and there is much of expression in that record, that goes, in

<sup>1</sup> This argument on the precedence of Warine de l'Isle is fallacious; for, independent of the various places in which his name occurs in preceding writs, the greater part of the barons whose names occur after his in the writs of the 5th Ric. II. were of a much older creation. Lord Fitz-Hugh's ancestor was summoned in the 14th Edw. II., thirty-seven years before a writ was issued to Gerard de l'Isle; and the following are the dates of the first writs to the ancestors of the next six barons to Warine de l'Isle, and to the ancestors of the last six barons, in the writ in question.

(15th Baron.) Warine de Insula—43 Edw. III: his father was summoned in the 31st Edw. III.

	Henry Fitz-Hugh . . . .	14 Edw. II.
	Richard le Scrope . . . .	44 Edw. III.
	Nicholas Burnell . . . .	24 Edw. III.
	William la Zouche . . . .	2 Edw. II.
(20th)	Roger de Clifford . . . .	28 Edw. I.
	Almaric de St. Amand . . . .	6 Edw. II.
(43rd)	Thomas de Morle . . . .	28 Edw. I.
	John de Welles . . . .	27 Edw. I.
	John Bouchier . . . .	16 Edw. III.
	Walter Fitz-Walter . . . .	23 Edw. I.
	John Lovell . . . .	27 Edw. I.
	John de Montacute . . . .	31 Edw. III.

It appears, therefore, that four of the oldest barons in the realm occur at the bottom of the roll; and that not one of the above persons is named according to his precedence. As similar anomalies exist in every writ of summons on record, this example will, it is presumed, be sufficient to prove that no reliance can be placed on the situation of names in writs, as showing the precedence of one earl over another earl, or one baron over another baron.

my humble apprehension, by matter of record, that is, by the Rolls of Parliament, to show that Warine de l'Isle did sit in that parliament<sup>1</sup>. It shows that, at that period, great attention was paid to the fact of personal attendance by every individual summoned,—that it was not, as in the present improved state of society, where the body of the House is enabled to transact the business of the Sovereign, of the public, and of themselves, by a competent number of individual lords; but that, at that period, it was considered as of the essence of the constitution of your lordships' House, that every individual peer so summoned should personally attend, unless he had either the king's writ of excuse, or some other excuse from inability, or ill health, or otherwise.

“ On the Roll of that parliament<sup>2</sup>, it is thus expressed: ‘ Be it remembered, that the Commemoration of Souls was this year on Saturday, and in consequence of Sunday next coming, this parliament was not begun till the Monday next coming, which was the fourth day of November, at which Monday came as well our lord the king, as great part of the prelates and lords of the realm, but forasmuch as some of the sheriffs had not returned their writs of parliament, and also for this, that great part of the prelates and lords of the realm who had summons of parliament were not yet come, our lord the king caused this parliament to adjourn to the morrow next coming.’ I consider this recital in the Rolls as strong and conclusive evidence that the constitution of this House then required that, if possible, every peer who

<sup>1</sup> See p. 52, to which document Mr. Hart undoubtedly refers; but that record is of the proceedings of the parliament which met at Westminster, on the morrow of St. John Port Latin, 5th Ric. II., i. e. 7th May, 1382, pursuant to writs tested at Westminster on the 24th of March preceding. Mr. Hart proceeds, however, to notice what occurs on the Rolls respecting the parliament which was summoned to meet on the morrow of All Souls, namely, on the 3rd November, 5th Ric. II. 1391, pursuant to the writ of the 22nd August, 5th Ric. II. 1381.—*Rot. Parl.* vol. iii. p. 98.

<sup>2</sup> See preceding note.

had not sufficient excuse, should attend. They adjourned to the morrow next coming, ' on which morrow, that is to say, the Tuesday, so came our lord the king, and the lords and prelates who were come to Westminster in the painted chamber, and there, on the said Tuesday, the knights, citizens and burgesses called, were called by their names, of whom many there made default ; in consequence of which, the same parliament was another time adjourned by the king and his commandment until the Wednesday then next coming : ' so that even the absence of the knights of shires and the burgesses was considered at that time as rendering the assembly of parliament so insufficient, so deficient, that it was thought right to adjourn it, though it appeared that the lords and prelates had arrived ; yet, as many of the citizens and burgesses, or the knights, had not attended, it was thought sufficient to adjourn it to the following Wednesday. On which Wednesday, in consequence of a great quarrel [debat] between the Duke of Lancaster and the Earl of Northumberland, of which complaint was made to the king, and great tumult raised by the people, among whom, a great force of men at arms, and archers arrayed for war, came to the parliament for both parties, quietly to appease which, our lord the king, with his council, were much occupied, the parliament was again further adjourned until Saturday then next coming, when it was held accordingly ; and moreover, it was commanded to all who had summons for this parliament that they should return to the same place on the said Saturday, for to hear there the causes for which our lord the king had caused this parliament to be summoned, to the end that in the mean time he might hear the said duke and earl, and with the assistance of God, put an end to the said quarrel ;<sup>1</sup> and then it seems that the lords

<sup>1</sup> *Rot. Parl.* vol. iii. p. 98—Instances of the parliament being adjourned for one or more days, because all the lords had not arrived, occurred in the 9th Edw. II., *Ibid.*

having appeared, the business of the parliament was transacted. I think that will be very conclusive evidence, if your lordships look to the whole tenor of the writ connected with the Rolls of this House, that every peer there summoned had in fact attended. But in the same year and the same reign, another parliament was summoned; the king's writ was issued tested the 24th day of March in the succeeding year, but still that succeeding year was in the same year of the reign of King Richard the Second: that writ of summons was rather more special in its terms, and it refers in its recital to the occasion of the parliament being called. The king then calls to the recollection of those peers who had constituted the antecedent parliament, that in that antecedent parliament they had granted him a subsidy to be raised upon wool skins, and wool felts, then the usual source of revenue in this country, and this to be taken at particular periods; that the mode of perception of that subsidy did not answer the immediate exigencies of the government; and that, therefore, it was necessary they should meet for the purpose of devising the means by which the Crown should obtain a loan upon the credit of this subsidy, to answer the immediate and pressing occasion. That is given as the ground on which this other parliament was summoned in this same year. In that writ of summons your lordships will find the same Warine de l'Isle summoned, and summoned precisely in the same rank and precedence next after the same Thomas de Berkeley, as having precedence in rank next to him, and prior to the same Henry Fitz-Hugh, who is the subsequent peer upon the record, and this writ has no addition of any peer in it. There is undoubtedly an omission of three individual peers who had

vol. i. p. 350, and in the 18th, 20th, 21st, 22nd, 25th, 27th, 29th, 36th, 42nd, and 51st years of Edward the Third; *Ibid.* vol. ii. pp. 146, 157, 164, 200, 225, 236, 246, 264, 268, 294, 361.

been summoned in the two preceding writs of summons; but we have, by search, found, that in the interim those three peers had, in fact, departed this life, which accounts for their being omitted<sup>1</sup>. With respect to those peers, we happen to have laid our hands on an instrument which showed, that the first of them, the Earl of Suffolk, had died, leaving an infant his heir<sup>2</sup>, who of course could not be summoned: with respect to the condition of the heirs of others we have not thought it necessary to trace them; but what passed in that parliament is important for your lordships' attention.

“ On the Rolls of Parliament it is entered, ‘ that to the parliament which had been summoned to meet on the morrow of St. John Port Latin, which was Wednesday the 7th of May, our said lord the king came in person, and many prelates, lords, and others, who had the summons of parliament; but forasmuch as some of the sheriffs of the counties had not yet returned their writs, and also as great part of the prelates and lords who had the same summons, were not as yet come, so the cause of the summoning of this parliament was on this Wednesday; therefore the same parliament was adjourned unto Thursday next ensuing, and of this proclamation was made in the Hall of Westminster, commanding all who have had the summons that they, upon

<sup>1</sup> The names omitted are those of William de Ufford, Earl of Suffolk, who died 15th February, 5 Ric. II. 1382; Almarick de St. Amand, who died 5 Ric. II.; and John Deincourt, who died 15th October, 5 Ric. II. 1381, which date proves that he could not have been present in the parliament on the 3rd of November, 1381.

<sup>2</sup> The heir of the Earl of Suffolk was not an infant: his three cousins were his heirs, namely, Roger Lord Scales, Robert Lord Willoughby, and Henry Lord Ferrars of Groby, all of whom were of full age. The earldom of Suffolk, though limited to the heirs general of his father, was considered to have become extinct [See a subsequent note;] and the above persons were *co-heirs* of the barony of Ufford. The son and heir of Almarick de St. Amand was summoned in the next year. Lord Deincourt left a son and heir, Ralph Deincourt, then one year old, who died three years afterwards.—*Excheq.*

their peril, be there upon the said Thursday by times, for to hear the causes above said<sup>1</sup>. Here it was considered so essential to the constitution of that great body that all should come, that it was thought of sufficient importance to adjourn to a future day to make proclamation, and to apprise those lords who had not attended on the day of adjournment that they must attend at their peril. The Rolls of Parliament then proceed; 'On which morrow so came in parliament, as well our lord the king, as the prelates, dukes, earls, barons and others who had the said summons, and then in the painted chamber, there being first called by their names, the knights of the shires, citizens of the cities, and burgesses of the boroughs returned for this parliament, Monsieur Richard Le Scrop Chivaler, chancellor of England, by command of the king, spoke as follows on the part of the king, to expound and show the causes of the summoning of this parliament, and said in terms following<sup>2</sup>;' so that your lordships will find by the records of parliament, that every individual who had summons had observed the summons, and had attended pursuant to the adjournment of that parliament; so that though there is no actual record by name of Warine De l'Isle, as having sat, because it was not the custom of the House to record the names of those who had taken their seats, yet the names of those who had made default in taking their seat being stated<sup>3</sup>, I submit there is as strong evidence of what I may call a negative sort as can be adduced. It is quite clear by this recital of the Rolls of Parliament, that all who were summoned did attend at the adjournment; we have shown the writ of

<sup>1</sup> See page 52. *Rot. Parl.* vol. iii. p. 122.

<sup>2</sup> *Ibid.*

<sup>3</sup> This does not appear to be the fact. The only allusion to names in the Roll clearly refers to the knights of shires, citizens, and burgesses: "A quel lendemain, si revint en parlement si bien notre Seignur le Roi come les prelatz, duc, contes, barons, et autres q'avoient la dite somonce; et illoques, en la

summons by which the parliament assembled ; and we show one directed to Warine de l'Isle. I should hope your lordships would think this evidence would of itself be sufficient to answer the exigency of that rule, which says it must be satisfactorily proved that the person had received a writ of summons, had attended, and had taken his seat in parliament ; for if Warine de l'Isle omitted to take his seat in parliament, he must either have had the king's writ of excuse, which would have appeared upon the rolls<sup>1</sup>, or he would have been fined ; no such thing appears, and the language on the contrary is, that there was no default on his part or the part of the lords summoned to attend the parliament. I should hope your lordships would consider that to be satisfactory and conclusive evidence that Warine de l'Isle had taken his seat as a peer of parliament, and that we have therefore made out to your satisfaction the two propositions which it is necessary for us to establish ; that he had received a writ of summons, and that having received, that he had obeyed it, so as to constitute a peerage by descent to his issue.

“ Perhaps it may be prudent to go still further, and to read another document as further evidence upon the subject. I am aware that some objections may be made to a portion of that document, as the record of the verity of a fact stated in it ; but of its being a record of the verity of that fact on which I am now addressing you, I think no doubt can be entertained. It may however first be important to my case to show the peculiar circumstances under which this barony has been situate from the 5th of Richard the II. up to the present time, to account for the lapse of time during

Chambre de Peinte, appelez la einz primerement par lours nouns, les chivalers des countees, citezeins des citees, et burgeys de burghs, retourner pur cest parlement.”—*Rot. Parl.* vol. ii. p. 122.

<sup>1</sup> Of the many examples cited in the note, p. 64—66 of peers being excused from attendance, only two appear on the Rolls of Parliament.



which it has been unclaimed by any individual. I am aware that it does now and then happen that persons whose blood has been ennobled, and who are entitled to seat and precedence in your lordships' House, have by the lapse of time been incapable of making out their title to the dignity, because we know that the collateral branches of families of the highest distinction will occasionally fall into ruin, and lose the power of tracing their pedigree, and the House in cases of that kind will always look with great jealousy at any evidence to make out a pedigree of that extent; but still it is but a jealousy in watching evidence upon the subject, giving your best attention to the facts proved, and that is always given willingly by your lordships for the purpose of doing justice to an individual who claims so high a portion of the birthright of an English subject as a title of dignity in this House. It may be perhaps in the recollection of some of your lordships, as illustrative of what I have said about collateral branches of families of great dignity falling into obscurity, that it was necessary to trace the pedigree of a peerage of the highest rank in this country, by showing the extinction of all the male branches in a particular line of heirship; and that for the purpose of making it out the lineal descendant of that great house was found in a state of extreme poverty and obscurity, and, if I do not mistake, supported by parochial relief<sup>1</sup>.

“ I now advert to this case, to show, by way of illustration as referable to the evidence, how in the lapse of time difficulties may arise in tracing through a series of centuries the pedigree of a family; my duty is to state that the labour on the part of my client is precisely the converse of that. The family which now solicit this title, which was lost in abeyance many hundred years, have not thought fit to claim, not because they were driven into obscurity and

<sup>1</sup> The Editor is not aware to what case Mr. Hart referred.

insignificance, but from time to time the female descendants of that family have made such splendid alliances, that those with whom they allied themselves, though they always attached the title of De l'Isle to their other titles, yet they never thought it necessary to claim it as a descendible inheritance, or rather to terminate the abeyance, because they had better titles—if more dignified titles can be called better—on which they founded their station in society.

“ Warine de l'Isle, who died early in the 6th year of King Richard the II., therefore, before he could have been summoned to any succeeding parliament, left issue an only daughter: she was named Margaret, and is generally denominated Margaret Lady de l'Isle. She intermarried with Thomas de Berkeley; that same baron who in the several writs of summons I have stated to your lordships, is always summoned to parliament as a baron of the realm, having seat in precedence before the barony of de l'Isle, which naturally accounts for Thomas de Berkeley, who had a barony in himself, not calling upon your lordships to have him admitted, and to take seat in a lower place in parliament. Such an application was quite unnecessary, and if he had taken the seat he could have held it only in right of his wife, the Lady Margaret: that, at this time, may not be subject to doubt, but then it was a subject of great doubt whether the husband of a baroness had a right to demand a writ of summons to sit in her stead and place in this house<sup>1</sup>; but the fact of his having precedence

<sup>1</sup> The numerous instances of the husbands of the daughters and heirs of barons by writ, being summoned *jure uxoris* in the fourteenth and fifteenth centuries, justify the conclusion that they were deemed to be entitled to their wives' baronies; and from the solemn decision of Henry the Eighth in person, in the case Mr. Wymbish, who married the Baroness Talboys, it would seem that such was then held to be the law on the subject, provided they had issue by them; for His Majesty did not deny the principle, but decided that “ forasmuch as he understood

in his own right to the title of his wife, Lady Margaret, accounts for there being no record of a claim on his part.

“ Lady Margaret had issue, by Thomas de Berkeley, only one daughter, and that only daughter intermarried with Richard Beauchamp, Earl of Warwick. The Earl of Warwick, of course, had higher dignity, therefore it is probable, that with the great power of which history informs us he was possessed, he was regardless of this barony which was vested in his wife by descent from her mother ; and it is no matter of surprize therefore, that there is no trace of any step taken by him for the purpose of heaping on to his other honours the barony of De l'Isle<sup>2</sup>. Lady Elizabeth, the wife of the Earl of Warwick, had three daughters only, Margaret, Eleanor, and Elizabeth ; Margaret who was the eldest of these, intermarried with John Talbot, Earl of Shrewsbury, and had a son of the name of John. The name of Talbot is so famous as a portion of the history of this country, that I need not call your lordships' recollection to their condition, as some of the first subjects of the country ; but that John Talbot thought it right, as the barony was then in abeyance, to avail himself of the natural influence he had with the crown to keep in his elder branch of the family the title of De l'Isle ; and in the 22nd year of King Henry VI., he was created Baron and Viscount de l'Isle, by patents ; and, as usual at the time, the descendible quality of that barony and viscounty

that there was no force of reason or law to give the name to him that *had no issue by his wife*, that neither Mr. Wymbish nor none other from henceforth should use the title of his wife's dignity, but such as by courtesy of England had also right to her possessions for term of his life.”—*Collins' Precedents concerning Baronies by Writ*, p. 10.

<sup>2</sup> It has been shown that the Earl of Warwick styled himself *Lord l'Isle*. See p. 8.

... issue in his heirs male of that John Talbot<sup>1</sup>.  
... therefore, that that patent goes to  
... in this branch of the family (that is  
... of the eldest co-heir) the possession of  
... the name of the title, though that did not com-  
pletely determine it by granting to the unlimited extent the  
barony in fee.

"The said John Talbot had an only son Thomas, and  
two daughters; that only son Thomas died on the 20th  
of March, in the 10th of Edward IV., and died without  
issue. This terminated the limitation of that patent,  
which to that extent had taken the barony; but that only  
took it to that extent, namely, during so long as there  
should be issue male, descendible from John, to whom the  
creation was given: he having died without issue, the  
barony again fell into abeyance<sup>2</sup>. But before I go to that  
part of the case, I would stop at the creation of John Talbot,  
as Baron de l'Isle, for the purpose of drawing attention to  
the patent of creation, as being a portion of evidence in addi-

<sup>1</sup> Mr. Hart, forgot, for the moment, that the Barony and Viscounty granted to Sir John Talbot were created by distinct patents, and with different remainders; the Barony being limited to him and his heirs, being lords of the manor of Kingston l'Isle, and the Viscounty to him and his heirs male, see pp. 9, 10. Neither of these grants affected the barony of l'Isle, created by the writ to Gerard de l'Isle, because John Talbot never was a co-heir of that dignity, his mother the eldest co-heir having survived him. This fact is most material, because it proves that that barony has never been taken out of the abeyance into which it fell on the death of the Countess of Warwick; but even had John Talbot been a co-heir, these grants would not, it is presumed, have been deemed to have terminated that abeyance, it having been decided in the La Warr case, *temp. Eliz.*, and in that of Willoughby de Broke, *temp. Jac. 1.*, that the acceptance of a new creation of a similar title to that of a barony by writ, by the party entitled to such barony by writ, does not extinguish the old dignity.—*Cruise on Dignities*, p. 114.

<sup>2</sup> This part of Mr. Hart's speech is erroneous in two points. First, the barony created to John Talbot did not become extinct on the death of his son Thomas without issue, though the viscounty undoubtedly did, as the former was limited to his

tion to that which I have adverted to, as evidence of the fact, that Warine de l'Isle had summons to, and sat as a peer of, parliament."

Adjourned to Thursday.

heirs being Lords of Kingston l'Isle ; and though perhaps the Barony was suspended whilst both the sisters and co-heirs of the said Thomas lived, yet it became revived when Elizabeth, the eldest, succeeded to the character of possessor of that manor, and of sole heir of the body of the grantee ; [See *Third Report on the Dignity of a Peer of the Realm*, p. 200 ;] and secondly, in considering that either of the patents to John Talbot affected the original barony of De l'Isle.

*Thursday, 16th June, 1825.*

*Mr. Hart.*—When last I had the honor to address your lordships, I concluded my observations with reference to the production of the writs of summons and the rolls of parliament relative to the meeting in the fifth year of Richard the Second, as affording what appeared to me to be conclusive evidence, that Warine de l'Isle had taken his seat, and had sat as a lord of parliament. If counsel might trust their own judgment on subjects of so much importance, they would perhaps be justified in leaving that part of the evidence where it was then placed ; but as we have another document which appears to be matter of record, recognising the character of Warine de l'Isle, as a peer of parliament, I think it right to call your attention again to that document. It was produced in a former part of the case, as containing, in the king's charter, recognition—and therefore unanswerable evidence of a great proportion of the pedigree of the family of De l'Isle, from the time of Edward the Third down to the 22nd of King Henry the Sixth, the charter being of that year of that reign.

It begins by stating that Warine de l'Isle, lately deceased, was seized, amongst other estates, of a certain property called the Manor of Kingston l'Isle : it then states his death, without male issue, and deduces the pedigree through a succession of females to that female who was the wife of a John Talbot who was Earl of Shrewsbury : for the purpose of verifying the pedigree, during that series of successions, this charter was put in and read. I now apply to it for a further purpose, namely, for the recital by which it recognises that

that Warine de l'Isle had been a peer of parliament ; and that that peerage in Warine de l'Isle was the foundation upon which John Talbot, the descendant of the elder female of the co-heirs of that Warine de l'Isle was created Baron de l'Isle and Viscount de l'Isle. There is, undoubtedly, a peculiarity in the contents of that charter which has been observed upon elsewhere in a Report made to your lordships ; a compilation as to which I have hardly expressions sufficient to show my respect for the research, and the learning there exhibited, in placing the subject-matter of the peerage in its proper light. In that compilation, observations are made upon the charter I am now about to read ; but no doubt remains of the authenticity of it.

It begins by a recital of the fact upon which the charter is supposed to proceed ; namely, that that Warine de l'Isle who is stated to be lord of the manor of Kingston l'Isle, had held that manor from time immemorial ; and that he and his ancestors, as lords of that manor, had had the dignity of barons of the realm. It is perfectly well known that the question with regard to territorial dignity, has been one as much contested as almost any that could come into consideration before you, or that part of the public who may be curious to investigate it ; and the noble Lord, Redesdale, whose research and learning have been exercised upon that subject, adopts the hypothesis, that there could be no barony by mere tenure ; or that at least it is very doubtful whether such barony could exist at any period subsequent to the reign of Edward I. or Edward II. : and the consequence has been, that the recital of this charter has called for observations in the *Reports of the Lords' Committees on the Dignity of a Peer of the Realm*. But those observations do not, as I apprehend, in the slightest degree tend to impugn the general effect and tendency of the charter ; but only that the recital which concerns Warine de l'Isle having been a baron, in virtue of his

tenure of Kingston l'Isle, must have been a mistake. It is not unlikely that the public officer who prepared this document might have been led into the mistake<sup>1</sup> of supposing that the possession of the dignity and the seizin of the manor were contemporaneous, or at least to be presumed to be so, as being beyond the time of memory. But unquestionably that is shown, in the Report to which I advert, to be a mistake; because, that Warine de l'Isle originally did not hold, when he was alleged to be a lord of parliament, the manor of Kingston l'Isle in chief of the Crown—which must be supposed, for the tenure to constitute a barony by tenure; but he held it by a sub-infeudation from another branch of his family, that family having been from time immemorial of high importance and dignity in this country, constantly employed in the service of the Crown on the most important matters, and uniformly receiving the approbation and bounty of the Crown in virtue of their services. It appears that the manor of Kingston l'Isle had been holden originally by another branch of this family—that Warine de l'Isle, who was in all probability a younger branch of the family, had received the sub-infeudation of that manor from another; the manor of Kingston l'Isle had, by some mode, certainly passed into the Crown, and had passed back again to this branch of the family of Warine de l'Isle. It was clear, therefore, that

<sup>1</sup> Grants from the Crown were usually made upon petitions; and as it was the general custom to introduce into the instruments the allegations of the petitioner, frequent instances occurred of grants being resumed, because the Crown was deceived by those statements. It might perhaps be contended that the charter to Sir John Talbot was void *ab initio*, from the Crown having been deceived by the petitioner's statements. "If," says Blackstone, "the Crown should be induced to grant any franchise or privilege to a subject contrary to reason, or in any ways prejudicial to the commonwealth, or a private person, the law will not suppose the king to have meant either an unwise or an injurious action, but declares that the king was deceived in his grant; and therefore such grant is rendered void, merely upon the foundation of fraud and deception either by or upon those agents whom the Crown has thought proper to employ."—*Commentaries*, i. 246.



in preparing this charter, those who found that at that time Warine de l'Isle was holding the manor of Kingston l'Isle in chief of the Crown, finding evidence by very ancient records, that Warine de l'Isle had been continuously summoned in the reign of Edward the Third and Richard the Second, had fallen into the belief and apprehension that it was a barony by tenure ; and therefore this goes on to recite that the king finding that Warine de l'Isle and his ancestors, lords of the manor of Kingston l'Isle, had, from time immemorial, been lords of parliament, and then stating the failure of his issue male, and that he was represented by female descendants, and that John Talbot, who is the person to whom this patent is granted, had married the elder branch of those descendants, the Crown is pleased to grant to him the dignity of Baron de l'Isle and Viscount de l'Isle<sup>1</sup> ; a form of dignity peculiar in itself, and of which I believe the public records afford very few, if any, similar grants—it is a grant to him and his heirs lords of the manor of Kingston l'Isle.

If, in point of fact, that charter could be considered as now operating, it would save a great proportion of the labour we now have in showing, that the manor of Kingston l'Isle has not continued in the family of that Warine, or his descendants ; and if the barony depended entirely upon that species of tenure, it would of course be extinguished by their parting with the estate itself. For whatever difficulties there may be found on the question, whether a dignity of this House could be so connected with land, as to give the person possessed of that land a title to the character of a peer of the realm—however difficult it would be to sustain a proposition of that kind—I think there would be no difficulty in concluding, that it was within the competence of the Crown to grant the dignity of a baron to an individual of his blood, so long as they should keep connected with them-

<sup>1</sup> See note 1, p. 80.

selves the seizin of a particular manor, or a particular honour. The Crown was competent to grant with any species of limitation a dignity in this House : but it has been said that it is not competent for the Crown to grant that dignity in your lordships' House which would enable the party to transfer the dignity by any act of his own. A limited title connected with a seizin might be granted ; but a title transferable to the alienee of that estate, one would suppose could never have existed consistently with the dignity of this House. But nothing arises upon that, excepting that the dignity there granted was certainly extinguished by the death of the grantee without issue : having been made to enure to the grantee and the heirs of his own body, it became in effect confined to the grantee, and no longer existed<sup>1</sup>. We must therefore necessarily look higher ; and I use this address to show the fact that the king's charter, which is matter of record, recognises the fact that Warine de l'Isle had had summons and seat in parliament, and had sat in your lordships' House. That gets rid of the difficulty, therefore, upon that proposition, laid down as it has been upon a former occasion in some of the books, that there must be summons and sitting, and that the proof of peerage or not peerage must be by matter of record :—this is matter of record, and therefore conclusive evidence upon that part of the subject. I do not consider, in technical expression, it would be necessary to prove the sitting by a record of the sitting ; but it is a species of evidence consisting of a record : the only sense in which the books could have used the words matter of record as necessary to prove the sitting ; and for this reason, that there is no mode of recording, in the dry technical sense

<sup>1</sup> The grantee did not die without issue. See note 2, p. 80, where it is contended that the barony of l'Isle granted to John Talbot, by the charter of 22nd Hen. VI., the grant alluded to by Mr. Hart, became vested in his daughter, as sole heir of his body and possessor of the manor of Kingston l'Isle.

of the word, the sitting. There is no record of the fact that such and such persons on any particular occasion sat in your lordships' House as peers of parliament ;—that is, individually describing the persons<sup>1</sup>. Incidentally, circumstances arose, by which, by the records of parliament, it does appear that certain individuals were present as lords of parliament ; but that is only a record establishing the fact of sitting, and I have no doubt the distinction will be very clear.

This is the whole of the evidence, and I submit it is abundant proof of that fact that we bring the present claimant's ancestor, Warine de l'Isle, within that principle of law—that to create a barony in fee, it must be shown that there was summons and sitting in parliament,—summons by the King's writ to attend the parliament,—and the fact that the individual so summoned did attend and take his seat in your lordships' House, and that is sufficient to create the dignity.

I have thus concluded all the observations I have to make upon that part of the case ; and with respect to the pedigree, I believe I may state with the perfect approbation of His Majesty's late Attorney-General, and I believe with the approbation of every other person who has taken the trouble to sift these ancient records, that we have established, beyond controversy, the pedigree of the present claimant. There is a circumstance, however, of which it is fit I should give some explanation, namely, with reference to there being abstracted from the body of evidence, a particular document which unquestionably may or not afford proof the one way or the other.<sup>2</sup>

<sup>1</sup> Mr. Hart clearly referred to periods antecedent to the 1st Hen. VIII., when the *Lords' Journals* commence, and in which the introduction of every peer into the House is recorded.

<sup>2</sup> A monumental inscription, tending to show that Robert Dudley, Earl of Leicester, had a legitimate son who left descendants. This circumstance will be hereafter noticed.

For the purpose of making out an extinction of all the superior branches of the family in the course of the petitioner's pedigree, having traced it down to the famous Robert Earl of Leicester, it was necessary to show the extinction of the issue of that earl, in order to take our pedigree through another and a junior branch. For the purpose of doing that, we referred, among other documents, to the monumental inscription in the church of Warwick—where members of the family of Dudley were interred in a chapel of great celebrity that was built by that family, and in which monuments were raised to their memory; and we produced to your lordships a monumental inscription of Ambrose Dudley, who was the elder brother of that Robert Dudley, and whose issue we were bound to trace to its extinction; or rather we were bound to show that that Robert Dudley, according to our averment, died without issue.

It appeared from an observation of one of your lordships upon this subject, that there was another monumental inscription which he thought we had improperly suppressed; that is, that we had not, as he conceived we ought, brought it before your lordships: and upon that principle I am free to avow it is the duty of those who set up cases for your lordships' consideration, not to content themselves with those portions of evidence only which they consider as making out their proposition, but to state fairly every portion of recorded evidence whatever may be its effect—whatever conclusions or doubts may be founded upon it, that your lordships' judgment may not act upon it improperly.

The observation arising upon the omission certainly produced an impression upon the minds of those who were to make out the case of Sir John Sidney, from the apprehension that it might be supposed that they had an object in view, in not adding this monumental inscription to the other portion of the same species of evidence which they deduced

from the same source. But it is right, to satisfy those whose judgment has in this place been exercised upon the subject, to say, that so far from having omitted that species of the evidence from any apprehension that it was evidence against them, they considered it as evidence conducive to the same result and conclusion; but they thought it evidence rather of a secondary nature of a particular fact they had primary and substantial and more admissible evidence. It was for that reason only this was omitted; and I think the House, when I come to state what that monumental inscription was, will be satisfied that it is, in conclusion, quite consonant to the anterior evidence; that is, the anterior evidence of the inscription upon the tomb of Ambrose, the elder brother of Robert, and other documents of that kind, and amongst others the will of that Robert himself, the effect of which is to show that he had no legitimate issue<sup>1</sup>.

The monumental inscription I refer to, was an inscription on the monument erected to the memory of Lady Katherine, late the wife of Sir Richard Leveson, who was a descendant of the same family—and certainly a descendant in the pure and genuine understanding—but not in the technical sense of the law of England, of that Robert Dudley, Earl of Leicester, who is averred to have died without legitimate issue<sup>2</sup>. The inscription is in these terms: ‘To the Memory of the Lady Katherine, late wife of Sir Richard Leveson, of Trentham, in the county of Staff. Knight of the Bath, one of the daughters and co-heirs of Sir Robert Dudley, Knight, son to Robert late Earl of Leicester, by Alicia his wife, daughter to Sir Thomas Leigh, of Stonely, Knight, and Baronet.’ Now, certainly, this lady, who is desirous of transmitting her pedigree, has done it in terms of as much ingenuity as is possible to raise a certain inference. No

<sup>1</sup> See page 53.

<sup>2</sup> See page 50.

man, who reads this cursorily, but would presume that Sir Robert Dudley was the son of Robert, late Earl of Leicester, by Alicia his wife. But when the evidence of the pedigree, and other circumstances are examined, it will be found that you must drop the intervening characters that appear upon this inscription, and consider that that Alicia is intended to be described as the wife of Sir Richard Leveson through whom the issue passed; 'one of the daughters and co-heirs of Sir Robert Dudley, Knight, son to Robert, late Earl of Leicester, by Alicia his wife, daughter to Sir Thomas Leigh of Stoneley, Knight.' That is a part of the inscription; which might lead certainly to the averment, and to the supposition that that Sir Robert Dudley was the legitimate son of Robert, late Earl of Leicester, by Alicia his wife. But when your lordships see that Alicia is not here predicated of as the wife of Robert Earl of Leicester, but as the wife of Sir Richard Leveson, it is then reduced to the single averment that that Sir Robert Dudley, Knight, was, as he may be presumed to have been, the son of Robert Earl of Leicester, but the illegitimate son of that Robert Earl of Leicester.

The first inference arising from this monumental inscription is, that if Robert Earl of Leicester, was Earl of Leicester with a limitation of the dignity to the heirs male of his body, as your lordships have it established in evidence before you, it is impossible that this monumental inscription could have been correct; because there could have been no son of Robert Earl of Leicester, who would have received merely the simple description of Sir Robert Dudley, Knight, but upon the death of Robert Earl of Leicester, he would have become Earl of Leicester, by descent. I use these observations, to show that this monumental inscription corroborates, and in no respect contradicts, the anterior evidence upon this subject—that we

could have had no motive in suppressing or omitting to bring forward this inscription, from an apprehension that it could be reasoned upon as evidence inconsistent with our case. But there is the will of the younger brother of this Robert Earl of Leicester, who states himself to have succeeded to the title and property of his brother, in consequence of his death without issue<sup>1</sup>. Your lordships have likewise the evidence of the will of that Robert Earl of Leicester, which shows that this Sir Robert Dudley, then Robert Dudley only, was very much the object of his father's affection—but describes him there as his base son, distinctly therefore marking that he was not his legitimate son.

There is another portion of evidence which is not unimportant upon this subject:—that this Robert, afterwards Sir Robert Dudley, having become a man of some eminence—he, while on the continent, had been created by a foreign potentate, the Grand Duke of Tuscany, Duke of Northumberland; and when his wife returned to England, the Crown certainly did, of its bounty, grant to her in respect of that

<sup>1</sup> Mr. Hart was here mistaken in the facts, but he corrected himself in another part of his speech. The testator alluded to, was Ambrose Dudley, Earl of Warwick, the elder brother of Robert Earl of Leicester, whom he survived; but the Earldom of Leicester being limited to the heirs male of the body of the said Robert, his brother did not of course succeed to it. The said Ambrose Earl of Warwick, states in his will, that his sister, the Countess of Huntingdon, and his grand niece, Elizabeth Sydney (granddaughter of his other sister Mary, wife of Sir Henry Sydney, K. G.) were his heirs which they could not have been, had his brother, the Earl of Leicester left a legitimate son; and which legitimate son would not only have been Earl of Leicester in right of the creation to his father, and nephew and heir at law of the said Earl of Warwick, but heir to the Earldom of Warwick also, that title having been granted to Ambrose Dudley, and the heirs male of his body, in default of which to his brother Sir Robert Dudley, (afterwards created Earl of Leicester,) and the heirs male of his body. In that part of his speech in which Mr. Hart corrected himself on this point, he noticed the fact that Robert Earl of Leicester founded a hospital at Warwick; and as further evidence that he died without legitimate issue, cited the proofs which had been adduced, that the ancestors of the Petitioner, and the Petitioner himself, had exercised the rights of patronage of that hospital, as heirs of the said earl.

dignity that had been given to her husband, the character of Duchess of Northumberland—but that was limited to her, and for her life strictly<sup>1</sup>.

There is another portion of evidence upon this same point which we have introduced to your lordships, namely, a suit in the Star Chamber<sup>2</sup>—a jurisdiction which, at that time, exercised among other functions rights of determining questions of this description—in which it was decided that Sir Robert Dudley was not the son and heir of Robert Dudley, Earl of Leicester, deceased. Sir Robert Dudley appeared to have been very much an object of the bounty of the Crown<sup>3</sup>, a man of great eminence; and it appears that he had no defect but that of illegitimacy. He had instituted a suit to be recognised as a legitimate son of the Earl of Leicester, but it was decided that he was not. I have the decree immediately before me, but it is not worth while to detain your lordships with reading it.

The remainder of the case lies within a very narrow compass. It appears that there was a Duke of Northumberland who with his brother suffered in that unfortunate convulsion which took place in the early part of the reign of Queen Mary: but at that period the dignity now claimed was in abeyance—and I shall presume the law to be so clear as to deserve no observation—unless the learned Attorney-General should, in answering the present case, raise some difficulties which do not at present occur to me as possible to be raised

<sup>1</sup> This is not exactly the fact. His Imperial Majesty gave Sir Robert Dudley the title of duke, and he was generally called Duke of Northumberland; but in the patent of the 23rd May, 20 Car. I. 1644, by which Alice his wife was created Duchess Dudley for her life, and the precedence of duke's daughters was given to her daughters, the reasons stated for that grant are very different. A copy of that patent having been afterwards read to the Committee, it will be again alluded to.

<sup>2</sup> No such document had been adduced in evidence, and in a subsequent part of his speech Mr. Hart corrected himself. He then read the decree of the Star Chamber as it is printed at length by Dugdale.—*Baronage*, tome ii. p. 223.

<sup>3</sup> It does not appear that he ever was an object of the bounty of the Crown.



—namely, that the attainder of an individual cannot extinguish a title while in abeyance; that the attainder has no effect on a title of dignity in abeyance and which does not exist; that it cannot shut out the title of the heir of the body, because in tracing the pedigree it is found that at one period a certain individual was attainted, who was not possessed of the dignity nor entitled to possess it: for it was non-existent, except as the act of the Crown might call it into existence,—the dignity being in abeyance, in respect of the original possessor of it having co-heirs, and consequently, neither co-heir having a title to claim it, but by the bounty of the Crown, in selecting the individual who should assume the dignity<sup>1</sup>. That proposition is so clear that I shall not trouble your lordships upon it; indeed, I may refer to the Report to which I have before adverted, where it is laid down in broad, plain, and specific terms, that a dignity in abeyance is not affected by the circumstance of an attainder of any descendant between the period of the abeyance com-

<sup>1</sup> With proper deference to the opinion of Mr. Hart, it is submitted, that his view of the effect of an attainder of high treason on a person who is the co-heir of a dignity, on that dignity, is erroneous; and that by such attainder, whatever interest he possessed in a dignity, becomes vested in the Crown. This opinion is offered with the greater diffidence, because the principle laid down by Mr. Hart was repeated by Mr. Shadwell, and was neither controverted by the Attorney-General, nor contradicted, even if it was not acquiesced in, by Lord Redesdale; but the opinion of the judges, on the case submitted to them, during the claim to the Barony of Beaumont, seems decisive of the question. The Barony of Beaumont fell into abeyance in 1507, between Sir Bryan Stapleton and Sir John Norris, the sons and heirs of the two daughters of Joan Lady Lovell, only sister of the last Viscount and Baron Beaumont. Sir John Norris died without issue in the 6th of Eliz., and his nephew, Henry Norris, son and heir of his brother, Henry Norris, who was executed and attainted of high treason in the 28th Hen. VIII. was found to be his heir. The said nephew, Henry Norris, was restored in blood, was summoned to parliament as a baron in the 14th, and died in the 43rd Eliz., leaving his grandson, Francis Norris, his heir, the heir general of whose body is the present Earl of Abingdon, and who is consequently a co-heir of the Barony of Beaumont. In 1794, Mr. Stapleton, the heir general of the above mentioned Sir Bryan Stapleton, claimed that barony, and after showing his own descent as the eldest co-heir, stated in his case, "That

mening, and its being terminated by a party coming into *esse*, who is capable of taking it<sup>1</sup>.

on the death of Sir John Norris, without issue, the abeyance of the barony of Beaumont terminated, in consequence of the attainder of his brother Henry, and that the whole right and claim to the same vested in the heirs of Joan the eldest sister." Upon the petition being referred to the then Attorney-General, the present Earl of Eldon, he reported " that an important question arose—whether, by the attainder of Henry Norris, the abeyance was determined, and the heirs of the eldest sister exclusively entitled by descent to the barony, by reason of the incapacity of Henry Norris's heirs thereby created to claim through him?—upon which point he had not been able to find any satisfactory determination." The petition was referred to the House, when Mr. Stapleton's counsel contended that the co-heirship was determined by the attainder, and that the case of Charleton Lord Powis was in point, in which the heir of one co-heir was attainted, and the heir of the other was summoned to the first parliament after he became of age. That case, however, was by no means conclusive, since, the writ in question might have issued from the grace of the Crown if the attainder vested the moiety possessed by the other co-heir in it. The lords therefore referred the following question to the judges, " whether, supposing the claimant to have proved himself one of the co-heirs of the body of Henry de Beaumont, and supposing a barony to have been created in the said Henry, and the heirs of his body, the claimant was then intitled of right to such barony, according to the state of the pedigree last delivered in on his part?" On the 25th of June, 1795, Lord Chief Justice Eyre delivered the opinion of the judges, which was, in effect, that the claimant's argument was fallacious, " and that he being but a co-heir, his claim to be solely intitled to this barony is unfounded." The inference to be drawn from his lordship's speech is, that the moiety which was vested in the Norris line escheated to the Crown.—*Cruise on Dignities*, p. 216. Throughout that case, neither the Attorney-General, the House, nor the judges entertained the slightest doubt that the attainder of Henry Norris extinguished his descendant's interest in the barony, notwithstanding that he himself never was a co-heir, and that his son and heir who, as heir to his uncle, became a co-heir, was restored in blood. If, then, such is the effect of the attainder of a person, whose son and heir becomes a co-heir of a dignity, it must be concluded that the attainder of a co-heir himself would be attended by similar consequences, and that such attainder *does* " extinguish a title in abeyance," so far as the party attainted, or those who claim through him, are concerned. The opinion of the judges on this subject in the Beaumont case, is noticed at some length in the *Fourth Report of the Lords' Committees on the Dignity of a Peer of the Realm*, whence it appears that their lordships were fully satisfied that the attainder of Henry Norris so extinguished his interest and the interest of his heirs in the dignity, that nothing but the reversal of the attainder by an act of parliament, could remove that disability, supposing, however, that the very comprehensive words of the act by which his son was restored in blood, did not do so.—pp. 53, 54.

<sup>1</sup> The passage referred to, appears to be that in the *Third General Report on the*

On a former occasion there was some little question, whether we had proved the extinction of another branch of the family at a more recent period, namely, of Jocelyne Earl of Leicester, who died in the year 1743. We have supplied that defect by parol testimony, and as that is comparatively of a very recent date, within the memory of living witnesses, and as their testimony was of a description hardly to be capable of being doubted, I consider that point of the pedigree now perfected. A single observation I would make with respect to the peculiarity of this case. In tracing the pedigree through those remote periods where facts frequently fall into oblivion, your lordships are obliged to feel about for the purpose of seeing the weight of the evidence connected circumstantially. In most cases that creates a difficulty; but in this case no such difficulty exists. From the period of Warine de l'Isle, up to the death of Jocelyne Earl of Leicester, this family had travelled through most of the various dignities, in point of title, that this country knows, and their names had appeared upon many public subjects on record, and consequently no difficulty arises in your lordships giving credit to that portion of the pedigree. With respect to the subsequent period, when the male branch of the family had been extinguished for a considerable time, they then connected themselves by a very splendid alliance with a family, whose name will always constitute a great

*Dignity of a Peer of the Realm*, where the l'Isle case is fully stated. "John Dudley was one of the co-heirs of the body of John Talbot, Viscount l'Isle, and was in the 34th Hen. VIII. created Viscount l'Isle, without any reference to the manor of Kingston l'Isle, and being afterwards created Earl of Warwick and Duke of Northumberland, was attainted and executed in the 1st of Queen Mary. This attainder could not affect the dignity of Baron de l'Isle, as that dignity was never vested in John Dudley."—p. 201. The obvious meaning of this sentence is, that the barony was not extinguished by the attainder of the duke, because he was only a co-heir of the dignity; but it does not assert that the attainder had no effect upon his interest in the barony, though it of course could not affect the interests of the other co-heirs.

name in the history of this country—that of Sydney, who, by connecting themselves in marriage with the co-heiresses of that Warine de l'Isle, had rather added something like splendour to a name already splendid in the history of the country. The present claimant has the splendour of being descended from Philip Sydney,<sup>1</sup> through a female branch of the family, and I present this case as one in which it will not be possible that your lordships can entertain a doubt in restoring to the body of your lordships' House a name, which has already done so much for this country, as has been effected by those bearing the names of de l'Isle and Sydney. Your lordships will, I am sure, be quite satisfied with the proof in point of pedigree; and in point of law, I conceive there is no doubt of the existence of the barony in him."

Adjourned to Monday se'nnight.

<sup>1</sup> Sir Philip Sydney left an only daughter and heiress, who married the Earl of Rutland, and died without issue. The Petitioner is, however, the heir of that eminent character, being descended from his brother Robert, first Sydney Earl of Leicester.

*Tuesday, 28th June 1828.*

*Lord Redesdale.*—Before the counsel proceed in this case I should wish one question to be put to the counsel for the claimant. The petition to His Majesty founds the right upon a writ issued in the 31st of King Edward the Third, to Gerard de l'Isle. The case which has been printed and laid before your lordships, states a very long pedigree, and a vast variety of incidents long prior to that ; and it seems to me that the evidence which has been produced by the petitioner negatives the whole of that statement, and proves that it is not true. I therefore wish to know, whether the counsel on the part of the claimant mean to state any thing with respect to that part of the case, or to throw it overboard, as I apprehend they must do ; and I think your lordships ought not to suffer that sort of statement to be made, for it is extremely injurious ; and if it is laid before your lordships and printed for your use, and is to be preserved amongst your documents, it may be used perhaps hereafter as evidence of that which it ought not to be evidence of. I therefore wish to know precisely from the counsel, whether they do disclaim the whole of that part of the case, and mean to take it up, as it is upon the petition, from the date of the writ issued in the reign of Edward the Third, and abandon the whole of the rest of the case or not ; if they do so, a minute ought to be entered in the proceedings of the day, stating that that has been done.

*Mr. Hart.*—On the part of the claimant, we abandon that part of the case. At the same time it would require some apology for having introduced that which we are now under the necessity of abandoning. It was done extremely inadvertently in printing these papers before counsel had an

opportunity of exercising their judgment upon the subject<sup>1</sup>. It was done for this reason, that in searching among the archives of this family, they found a very old pedigree among the Sidney Papers, and thinking it was right to produce every thing, it was produced with the other papers. We have not used it at all as evidence. It was drawn up in a mistake by some ancient retainer of the family many years ago, without sufficient knowledge of the facts.

*Lord Redesdale.*—I do not mean to impute to the claimant or the counsel any intended impropriety; they would very likely be led into the mistake by a publication of some authority, I mean Dugdale's Baronage. Dugdale has fallen into the mistake himself: he has stated the pedigree of the l'Isle family one part of it one way, and the other part another. I mention this because I am sure that great caution upon the subject should be observed. Your lordships see that that pedigree might be received in evidence as an ancient document in the hands of the family. Now it is clear from the records that have been produced, that the early part of this pedigree is falsely stated. I am very certain, that in claims of this description, you cannot be too cautious. In this case there is distinct evidence of a summons to parliament of this person, of the name of Gerard de l'Isle, in the 31st of Edward the Third, and it is contended that he received that summons as a baron. But upon that subject I wish the counsel to be perfectly aware of any objection that arises, and perhaps it is better that they should be informed of it before they open the case, than pending it. In the reign of Henry the Sixth a patent was obtained upon this subject. Gerard de l'Isle was summoned in the 31st of Edward the Third, and he died in the 34th of Edward the

<sup>1</sup> These statements were introduced under the authority of Mr. Shadwell, who settled the case, and that gentleman subsequently explained to the House his reasons.

Third, leaving Warine de l'Isle his only son and heir, who was summoned, as a baron of the realm, from the 43rd of Edward the Third, to the 5th of Richard the Second—however, that is of no great importance<sup>1</sup>. Now after that Warine de l'Isle, no person was summoned to parliament claiming under Warine de l'Isle, until in the reign of Henry the Sixth<sup>2</sup>, when the son of the Earl of Shrewsbury, who married a daughter of the lady who was heiress of this family of l'Isle, claimed to be entitled to the dignity of Lord l'Isle, and [by] seizin of the manor of Kingston l'Isle; and obtained a patent from the Crown acknowledging that title. It now appears most clearly, that that was a patent founded in error, because the manor of Kingston l'Isle—it appears from the documents—and indeed it is essential to the claimant to prove it—was not held of the Crown, but was held of another family of the name of l'Isle, persons of great fortune at that time; and their property descended to Isabella, Countess of Albemarle, and afterwards to Robert de l'Isle; and when Henry de l'Isle obtained this property, as the heir of this Countess of Albemarle, that manor was surrendered, because it was not held immediately of the king, but held of a subject.

Having obtained that patent acknowledging the right in

<sup>1</sup> It was upon these facts that the petitioner's case *wholly and entirely* depended.

<sup>2</sup> After the death of Warine de l'Isle, in the 6th Ric. II., the heir to the barony, which is presumed to have been created to him, or to his father, by writs of summons and sittings, was always a *female*; so that unless their respective husbands had been summoned in their right, it was impossible for any person to have been summoned to parliament claiming under Warine de l'Isle; and as those husbands possessed, the one an older barony, and the other an earldom, it is not likely that either should have been summoned as Lord l'Isle. From the death of Elizabeth Countess of Warwick, which must have taken place between February, 1415, when she is mentioned in her father-in-law's will, and November, 1423, when her husband married his second wife (*Monasticon*, vol. i. p. 158, b.,) the barony of l'Isle, so created, has remained in *abeyance*.

the manor and the barony upon a false suggestion, the patent proceeds with a sort of doubt upon the subject, and creates John Talbot, Baron de l'Isle, and his heirs and assigns, lords of the manor of Kingston l'Isle. Now, a question will arise whether that patent did not create a new title—a title with precedence from the date of that patent, and a title annexed to the manor of Kingston l'Isle; so that no person who was not lord of the manor of Kingston l'Isle, could be Baron de l'Isle under that grant: that is a question to be considered by your lordships; but this follows, that John Talbot, who obtained that patent, his mother being then alive, if there was any right under the old writ, it was in his mother, and not in him; and therefore the writ that summoned him to parliament, was a writ issued by virtue of that patent, and not by virtue of his descent;—the result of that is, that since the 5th of Richard the Second, no person has ever sat in parliament by virtue of writs issued to Gerard de l'Isle and Warine de l'Isle, his son<sup>1</sup>.

This is a subject of great importance for your lordships to consider, because the number of persons who have been from time to time summoned to parliament, and who probably may have sat in parliament in those early times, in the reigns of Edward the First, Second, and Third, and whose descendants have never sat in parliament, is very considerable; and if a claim is to be founded upon writs issued at that time, where there has not been a succession of sittings under similar writs to their descendants, it is impossible to say how many claims may not be brought before your lordships, that for centuries have not been enforced<sup>2</sup>. I call your lordships' at-

<sup>1</sup> It was shown by the last note, that no male person was entitled to the barony, excepting *jure uxoris* after the death of Warine de l'Isle, and that since the year 1423, the dignity has remained in *abeyance*.

<sup>2</sup> The remarks of the noble lord are of very great importance, and it is difficult for the editor to express his opinion upon them without incurring a charge of pre-



tention to this subject, in order that the counsel may be perfectly aware of the view I take of the case. I believe the title that is most near to the claim now made, is that of Lord Botetourt, which is one of very great antiquity.

It is very important, that your lordships should endeavour to fix in your minds some time when a writ issued, to summon a person to parliament, and a sitting under that writ should be deemed to create a title to a barony in fee, that is, to a man and the heirs of his body. The first resolution upon the subject was, as to a title now enjoyed by a noble lord of your lordships' House—Lord Clifton. The question was put to the judges, and the judges were of opinion that Gervase Clifton having had a summons to parliament, and having sat under that writ, he thereby gained a right to the barony descendible to his heirs general. That is the first decision upon the subject, and the first time I can find that any claim of that kind was ever brought forward<sup>1</sup>, and if that

sumption. He feels it, however, to be his duty to observe : first, that the question before the House was one of *law* and not of *expediency*, the Committee being called upon to report whether the petitioner had or had not a right to the title which he claimed, and it is humbly conceived that his Case had nothing whatever to do with the number of claims to which the success of his petition might give rise : secondly, that after many years' attention to the subject, after a critical examination of the facts connected with every barony by writ that has existed, and a perusal of the writers who have treated on the subject, he is compelled to form a conclusion of an immediately opposite nature to such of them as assert that a writ and sitting did not create an hereditary dignity ; and to infer, from the descent of those dignities, from repeated decisions of the House of Lords—decisions which each new case corroborated, and which none in any degree contradicted—and from the *dictum* of Lord Coke and of other great authorities, that a writ of summons to parliament, and a sitting in consequence of such writ, was always held to create a barony descendible to the heirs of the party so summoned.

<sup>1</sup> The claim to the barony of Clifton was made in 1673. Although that might have been the first time the question was referred to the judges, if, which it is impossible to believe, the case of Abergavenny in the 7th Jac. I., reported by Lord Coke, never occurred, [See a subsequent Note and Appendix] the principle that a writ of summons and sitting created an hereditary dignity to the heirs-general, had been admitted in the cases of Dacre, *temp.* Henry VI. and Elizabeth, *le Despenseur*, and Dacre, *temp.* Jac. I., and in that of Ogle and Grey of Ruthyn, *temp.* Charles I. ;

is to be considered an inference of law, it is material that there should be some point of time fixed when that inference of law was first to be raised, because it is manifest, from what has passed in preceding reigns, that until that resolution was come to by the House with respect to the barony of Clifton, in consequence of the opinion given upon that occasion, the general impression must have been otherwise. If it had not been so, there must have been a great number of

and there are innumerable instances in which the husbands, or sons, of daughters and heirs of barons by writ, were summoned, in every reign from that of Edward II. to the time of the decision in the le Despenser claim. The case the nearest in point to that of Clifton was that of Talboys, *temp.* Hen. VIII., where there was but one writ and one sitting; and yet the right of his daughter and heiress to the dignity was not only undisputed, but fully recognised, by the decision against the claim of her husband to the barony, until he had issue by her. There is, however, a very strong case, confirmatory of the opinion that baronies which originated in writs of summons were considered, at a very early period, to be hereditary to the heirs general, in the instance of the barony of Dacre, which it is material to state. Thomas de Multon, whose ancestors were barons by tenure, was summoned to parliament from the 1st to the 7th Edw. II., when he died, leaving Margaret his daughter and heir, who married Ralph de Dacre. The said Ralph was summoned to parliament from the 14th Edw. II. till his death in the 12th Edw. III. His three sons—who succeeded each other—his grandson, and his great grandson, were regularly summoned. On the death of the latter in 1457, his granddaughter Joan, (daughter and heir of Thomas his eldest son, who died in *vita patris*) the wife of Sir Richard Fenys, was his heir *general*, and his second son, Sir Ralph Dacre, his heir *male*. By patent, 7th November, 37 Hen. VI. 1458, His Majesty, in consideration that the late Lord Dacre was one of the barons of the realm, and had inherited that dignity to him and *his heirs*, and that Joan, wife of Sir Richard Fenys, Knight, was his cousin and next heir, accepted and declared the said Sir Richard to be Lord Dacre, and one of the barons of the realm; and he was accordingly summoned to parliament as “Ricardus Fenys Dominus de Dacre” by writ 38 Hen. VI. By writ in the same year, the said Sir Ralph was also summoned to parliament as “Ralph Dacre of Gillesland:” he was slain in 1461, and was subsequently attainted. In the patent of the 38th Hen. VI. to Sir Richard Fenys, there are no words of limitation; but in the award under the privy seal, dated on the 8th April, 13 Edw. IV. 1475, on the claim of Sir Humphrey Dacre, brother of the late Ralph Lord Dacre of Gillesland, son and heir male of Lord Dacre (who died in 1457) to certain lands, it is stated that his claims *had been submitted to the judges, and declared by them* to the King and the lords spiritual and temporal in parliament; and it was determined that the said Sir Richard Fenys, in right of his wife, and the heirs of *her body*, should be Lords Dacre, with the precedence of the

persons sitting in your lordships' House who had no right to sit there. I state these subjects for your lordships' consideration, having employed some years in endeavouring to give the House information generally upon the subject of peerage, and because I think it right that the counsel for the claimant should be aware that such objections may be raised to their Case.

*Mr. Hart.*—Counsel can but express the obligation they

last lord, and certain lands are settled on her and her heirs ; and that the said Sir Humphrey Dacre and the heirs *male* of the body of his father should be styled Lords Dacre of Gillesland, with precedence immediately after the said Sir Richard Fenys and the heirs of the body of his said wife. The barony of Dacre continued vested in the heirs male of Sir Richard Fenys and Joan Dacre his wife, until 1594, when Margaret, wife of Sampson Lennard, sister of the last lord, became the heir general. She claimed the barony in the 29th Eliz. ; and the Commissioners, to whom her case was referred, reported in her favour, because “ the said barony appeared to them to have formerly descended unto the *heirs general* whenever the heirs male failed ; and that she being the only heir of that house, her Majesty might allow her the dignity, at her good pleasure, following therein the example of her Majesty's predecessors, *Harl. MSS. 6778, ff. 5, 6.* It would require too much space to state properly the proceedings relative to the barony of Dacre of Gillesland in 1569, on the claim of the *heir male* of the last lord against the *heirs general*, further than, notwithstanding it was provided by the award in the 13th Edw. IV., that it should descend to the heirs *male* of the Lord Dacre who died in 1457, the Commissioners, before whom the proceedings in 1569 took place, determined that *baronies beginning by writ should, nor ought, to descend unto any heir male from any ancestor, so long as the same ancestor had any other nearer in blood.* Whence it would seem that the commissioners did not consider that the award of the 13th Edw. IV. *created* the barony of Dacre of Gillesland, but that it originated in the writ of summons to Ralph Dacre in the 38th Hen. VI., or to his brother and heir, Humphrey, in the 22nd Edw. IV. Nothing can be more applicable to the suggestion of the noble lord than the argument of Sir Thomas Powis, the petitioner's counsel in the claim to the barony of Willoughby de Broke, in 1696. “ He read a list of those peers who had baronies by writ in them, included under higher titles ; and also a list of those lords who then sat in the House by virtue only of original writs of summons, and by descent from baronies in fee ; and a list of several noble ladies who then had such baronies in them, some of whom had been declared baronesses in parliament, and insinuated to the lords, *that while he was arguing one peer into the House, the King's counsel were arguing several noble dukes and earls out of their baronies, and several sitting barons out of the House ;* for if a summons by writ was not an estate in fee, and descendible, then might the King choose whether he would summon those barons any more to parliament after the conclusion of the present parliament ; and so by that means would subject the peerage to great uncer-

feel to your lordships for presenting to their minds the difficulties that occur, because it is only by meeting those difficulties that they can hope to succeed. When I had last the honor to address the House, I had, as well as I could, in the absence of positive objection, alluded to those difficulties that have been adverted to; but having now presented to me the point of view which specifically applies to the lapse of

tainties and prevarications, by being sometimes lords, and sometimes commoners, and consequently destroy all their resolutions and judgments touching the descent of such baronies. The King's counsel urged several instances of ancient times against the descent of such baronies, and *argued against the operation of the writs*, and that in this case it did not appear but that the first foundation of the honor might have been by patent, *or for life*, or in tail male, and cited Bromfete's case. They further insisted, that the descent of the barony to co-heirs so merged or extinguished it, that it reverted to the Crown, and that it was in abeyance, by which means it was left to the clutches of the law so as not to be taken out from thence by any person whatsoever, otherwise than by a new creation,"—*Cruise on Dignities*, pp. 205, 206; *Collins' Precedents*, p. 325. The House, however, did not admit the validity of these objections, as it resolved in favor of the petitioner, who was the heir general of Robert Willoughby, summoned by writ in the 7th Hen. VII. It is very remarkable that the decision in the Clifton case, about twenty-three years before, does not appear to have been cited during these proceedings, hence the result of this claim may perhaps be held to be a *second judgment* of the House upon the point of law, uninfluenced by the former decision; and consequently it may be deemed to be settled by two solemn judgments of the House, the one in 1673, the other in 1696, that a writ and sitting create a barony descendible to heirs general. Since the accession of Charles II. the right of the heirs general to baronies created by writ, has been admitted by the House of Lords in the following numerous instances: Clifton, Fitzwalter, and Roos, *temp.* Charles II.; Clifford, Clifford of Lanesborough, Howard of Walden, and Willoughby de Broke, *temp.* William and Mary; Wentworth, *temp.* Anne; Berners, *temp.* George I.; Clifford of Burlington, *temp.* George II.; and Beaumont, Botetourt, Clinton, Conyers, Hastings, Howard of Walden, Roos, Say and Sele, Strange, Willoughby of Eresby, and Zouch, *temp.* George III.; no less than ten of which baronies originated in writs of summons before the 5th Ric. II., the claims to some of which were disputed by the heirs male of the preceding barons, and were not decided without considerable discussion; and in the case of the barony of Clifton in 1673, not until the question was referred to the judges. The only instance in which the heir male succeeded to the dignity instead of the heir general since the accession of Elizabeth, excepting in the special instance of Abergavenny, was in that of La Warr; but this exception is an anomaly, and establishes nothing against the numerous decisions the other way, especially as the heir general offered no opposition. The noble lord's opinion appears to have been formed from finding that many persons were summoned in the reigns of Edw. 1., II., and III., once or twice

time as well as the effect of that charter, it would be a very great indulgence to the counsel of the present petitioner, to have some time to mature their minds upon the various points that will naturally arise upon the suggestions now thrown out, in order to make, if possible, the answer complete.

Your lordship has accurately adverted to what may be considered the opinion of the judges in the Clifton Case ;

only, whose heirs were never summoned ; but in more than two-thirds of these cases, the parties died without heirs of their bodies, or their heirs were under age, and as attendance in parliament was deemed an onerous duty, rather than coveted as a point of ambition, of which fact ample proof has been adduced in former notes, [See notes, pp. 63, 64, 65, 66,] no claim was made to a writ of summons by the heir on becoming of age. In many of the cases in which persons were summoned once or twice only, it is very doubtful if they were summoned *as peers*, whilst in others it can be shown that they were summoned *jure uxoris* ; and the anomaly of the heirs of barons not being summoned was not confined to a period *antecedent* to the 5th Ric. II., but sometimes occurred in subsequent reigns. Far more room would be necessary than can be spared, to state the arguments—arguments which appear to the editor conclusive and unanswerable—that a writ of summons to, and a sitting in, parliament, created an hereditary barony to the heirs of the body of the person so summoned, as well in the reigns of Edw. I., II., and III., as since ; but it must be observed that if such was not the law, the inference would be, that the numerous persons who were regularly summoned on the demise of their ancestors between the 23rd Edw. I. and 5th Ric. II., owed their writs to the mere grace of the Crown, and that there was not in that period a single baron in the realm who was entitled, by law, to a writ of summons to parliament, or in other words, that there were no hereditary barons antecedent to the 5th of Ric. II., though no less than fourteen peers or peeresses at this moment enjoy dignities in virtue of creations by writ in the reigns in question ; and that the solemn decision in the Botetourt Case in the year 1764, in which there were only four writs after the 5th Ric. II., as well as the uninterrupted practice of ages and every judgment of the House on peerages, has been erroneous. It is important to observe the contradictions which occur on this subject in the *Reports of the Lords' Committees on the Dignity of a Peer of the Realm*. No person can read from page 440 to the end of the *First Report*, and not feel persuaded that their lordships were then of opinion that the baronies of Abergavenny, Fitz-Walter, and others there mentioned, were hereditary dignities created by writs of summons, long before the 5th Ric. II., nor could the reader anticipate that subsequent *Reports* would express a doubt on the subject, [see particularly *First Report*, p. 440, l. 15 to 30 ; p. 444, last five lines from the bottom ; p. 446, l. 38, to the bottom]. The reasons for the suggestion that the 5th of Ric. II. is the time when baronies by writ first became hereditary, it is not in the editor's power to explain, or even to guess at ; but this point will be again adverted to.

and although I consider we have very strong grounds to go upon, with reference to the adjudication in that case, yet I am aware that in the place where I stand, the judgment of your lordships must be exercised with a considerable latitude of discretion in the application of every specific precedent to the Case produced at the bar. I am perfectly aware of that ; and I apprehend in this House, if length of time be not a positive bar, there could be few cases, perhaps I might say there could be no case, in which the absence of sitting for so long a period of time, as in the present instance we must admit to have taken place,—there could be no case in which the lapse of time is more easily accounted for than in this Case ;<sup>1</sup> and if it be desired that I should proceed to re-state some portion of what I have stated before, I shall readily do

<sup>1</sup> The Botetourt Case tends to prove that no lapse of time is a bar to a claim to a peerage. The second Lord Botetourt died in 1385, from which time, until 1764, when the barony was allowed to the youngest co-heir, a period of 379 years, it remained in abeyance. The barony of Willoughby de Broke, when allowed in 1695, had been in abeyance 173 years. The barony of Berners, when allowed in 1720, had been dormant for 188 years, during the claim to which, lapse of time was expressly urged by the counsel of the Crown, without success. The barony of Mowbray, when allowed in 1639, had been in abeyance 164 years. The barony of Fitz-Warine, when allowed to William Bourchier in 1448, had been dormant, *i. e.* no person had been summoned to parliament by that title for 112 years : and a greater length of time had elapsed between the date of the last writ to a Lord Ferrers of Chartley and the writ to Sir Walter Devereux, who married the heiress of that house in 1461 ; and other cases might be adduced. It was well observed in the claim to the barony of Botetourt, “ It is an undoubted maxim with regard to honors that they cannot be extinguished, otherwise than by forfeiture, or by act of parliament. Claims to baronies which have been long dormant, are difficult to be made out, but whenever the right happens to be clearly proved, the safety and dignity of the peerage are both concerned, that no length of time should bar or even prejudice the title. Most of the ancient baronies are so merged by the intermarriages of the great families, or so exposed to the objection of forfeiture, that very few instances have occurred of claims of the like nature, but in all those which have occurred, the length of time during which the honor has remained dormant never has formed a ground of objection.”—*Cruise on Dignities*, p. 167. Warine Lord l’Isle died in 1381, when the barony descended to his daughter, on whose death, in 1392, it devolved on her daughter and heir, who died before 1424, when it fell into, and has ever since remained in, abeyance ; so that the dignity was

it, though perhaps not quite so collectively as I should do if I had had further time to look into the Case.

With reference to the case of Sir Gervase Clifton, I take it to be true, as a general rule, that length of time is no bar to the claim of a peerage or a barony—that it is not that species of property against which length of time will operate. It is true that length of time may produce great effects in raising doubts upon the authenticity of pedigree—but pedigree unquestionably established by such evidence as shall be satisfactory to your lordships, would at once be sufficient to prevent any imputation arising from lapse of time.

I have stated the writs of summons that had issued in the successive reigns of Edward the Third, and Richard the Second; and it is in evidence that Warine de l'Isle, who

vested in females 33 years, and when claimed by Sir John Shelley Sidney, had been in abeyance 400 years. Upon this subject, the opinion of two learned lords, Erskine and Redesdale, was expressed in the Banbury Case, and it seems that they thought very differently on the point. Lord Redesdale observed, “I think a lapse of time a sufficient ground for rejecting this claim, and I am persuaded that it is as important to hold lapse of time on a question of peerage as it does to a claim of any other description. When a peerage falls in abeyance, no one of the co-heirs has a right independent of the favor of the Crown; but where the right is entire, and no disability can be suggested, non-claim constitutes a strong ground of presumption (against the right) that the right was barred, or the claim not well founded, though the objection to the claim may not, in consequence of the lapse of time, be clearly shown.” Whilst Lord Erskine, with his usual fervour and eloquence, remarked, “Questions of peerage are not fettered by the rules of law that prescribe the limitation of actions; and it is one of the brightest privileges of our order, that we transmit to our descendants a title to the honors we have inherited or earned, which is incapable either of alienation or surrender.”—*Appendix to the Report of the Gardner Case*, ably edited by Denis le Marchant, Esq. pp. 454. 464. When it is considered that a claim to a peerage cannot be prosecuted without an expense of several thousand pounds, that a termination of an abeyance may have occurred several years before the sole heir or his descendant is aware of the fact, and that many circumstances may deter one person from urging his claim, though he may be perfectly conscious of his right—such as a large family, a limited income, a dislike to notoriety, for example,—which may not exist in his heir, it does not seem strictly consonant to justice, that a party who is in a situation to establish his pretensions, should be precluded by the poverty or diffidence of his father or more remote ancestor. The reasons why there should be limitation to claims to lands do

was summoned up to the year of his death, died in that year without male issue.

There was a succession of three females as the immediate descendants of that Warine de l'Isle; there was Margaret, who married Thomas de Berkeley; Elizabeth, who married Beauchamp Earl of Warwick; and Margaret, who married John Earl of Shrewsbury. Now that there should have been no sitting, as under the original writ of summons, from the death of Warine de l'Isle, in the 6th of King Richard II. down to the 22nd Henry VI., is naturally accounted for,—there was no male representative of the family who could claim his seat in this House in that character. Your lordships will find that the alliances contracted with those various female descendants were of such dignity, as that the

not apply to honors; for whenever such honors may be allowed, no person is disturbed in the enjoyment of them. A seat becomes occupied it is true; but it is a seat from which no one is pushed: there is no transfer of property carrying ruin to one party whilst it enriches the other; and the only injury which arises to any, is, that an individual is elevated one step above perhaps a third of the members of the House, not by a new creation, but by the recognition of a right which he inherited, and which right the Crown cannot destroy. As Lord Erskine truly observed, the principle that when once the blood of a man is ennobled by sitting in that House as a peer, nothing but delinquency can deprive his posterity of the same honor, is the most exalted distinction and important privilege of the peerage. That a lapse of time extinguishes an honor, appears to have been said in the *Wilmington de Broke* case in 1694, and in the *Berners* in 1719, but without success: and the Earl of Huntingdon, in a letter dated 25th February, 1694-5 to the claimant, thus alluded to the point, "I do think it of infinite importance, especially to peers where they have baronies in them by writ, to oppose this doctrine of a lapse, because it may happen that a lord may die and leave two daughters, one of which may also die within a month after the father: in this case the title is drowned, although she become a sole heir, which is against the reason and end of the law."—"I am very ready to join with those lords who are for supporting these fee simple baronies, and shall this day write to the Earl of Ailesbury who hath my proxy, that if it be necessary to acquaint the House that as I am concerned in interest in the consequence of this case, so my concurrence goes along with that opinion, that there is no lapse therein." In another place his lordship observed "my paternal barony is by writ, as well as those descended to me by matches"—*Collins' Precedents*, pp. 330, 331. The Earl of Huntingdon was then possessed of the baronies of Hastings, created, by writ 1st Edw. IV., his "paternal barony;" Hungerford, by writ, 14 Hen. VI.; Molines, by writ, 21 Edw. III.; and Botreaux, by writ, 42 Edw. III.



claim on the part of their husbands, or the representation of the title through their husbands, would have conferred no superior dignity to any of those individuals. With respect to the first, namely Margaret, who married Thomas de Berkeley, it appears upon the evidence, that that Thomas de Berkeley was himself a lord of parliament, and in point of rank had precedence of the title of De l'Isle. As he had rank over Baron de l'Isle, his claiming in right of his wife the title of Baron de l'Isle would have been totally nugatory for any conceivable purpose. By that marriage he had only issue one daughter, the Lady Elizabeth ; and your lordships will find by the pedigree that she married the Earl of Warwick, consequently there could have been no purpose for which her husband in her right could have claimed a seat in this House in right of his wife. From that marriage there was only female issue, namely, Margaret, Eleanor, and Elizabeth ; Margaret married the Earl of Shrewsbury, and the same principle applies to her husband, having a seat in parliament<sup>1</sup>. The Earl of Shrewsbury could have had no object in looking to the barony in right of his wife, if the wife being seized of the barony at that time could confer the right of sitting in this house ; and your lordships know it was made the subject of controversy amongst great lawyers upon subjects of this description, whether a female heir to a barony in fee, marrying, gave her husband a right to ask for a writ of summons : and among other difficulties that appeared was this, if during her lifetime, the husband had a right to demand a writ of summons, he must, having issue, and having a right to sit as tenant by the courtesy, by parity of reasoning,

<sup>1</sup> Margaret Countess of Shrewsbury, was only the eldest *co-heir* of the barony, and consequently had no right to the dignity. As has been before remarked, however, the title of *Lady l'Isle* was ascribed to her in the inscription on her monument.— See p. 9.

if he once entered by right of his wife, his title to the inheritance of his wife, would by the courtesy of England, endure, during his life. And then this difficulty (it being the title of the husband to demand a writ of summons in right of his wife) was presented, that wife dying might leave an heir male who would have a right by descent to a writ of summons, whilst the husband would have a right by custom. That was a very great question at one time<sup>1</sup>, and whether it was decided one way or the other is not material in this point of view; I only mention it to account for the omission of any person to ask for a writ of summons during the time the two first baronesses were heirs; and when Margaret became baroness<sup>2</sup>, there being other co-heirs, the title to the seat was not matter of right but depending upon the pleasure of the Crown: and although the Crown had been in the habit of generally exercising its grace in behalf of the eldest co-heir, yet it was by no means the universal practice; it was not a rule inflexible in itself, though generally pursued to guide the pleasure of the Crown. That being the case, when John Talbot, who was the issue of that marriage, became the representative of the elder co-heir, then it is that the family seems to have had recourse to an application to the Crown upon the subject of this barony; and then was issued that charter, or rather that grant of the Crown confirmed by parliament<sup>3</sup>, which your lordship has been pleased to advert to as creating the difficulty. We hope that this transmission of the descents of females, will account for the

<sup>1</sup> The case of the Barony of Talboys, temp. Henry VIII., is probably here referred to.—See note, p. 78.

<sup>2</sup> She never became *Baroness l'Isle*, see note, p. 109.

<sup>3</sup> The words “*per auctoritate parliamenti*” had not, as has been before observed, and as will be shown hereafter, that meaning.

lapse between the 5th of Richard the II., and the 2nd of King Henry the VI.<sup>1</sup> In adverting to that charter, we have certainly been alive to the difficulties that were presented with reference to the mistake of the fact; but we do not apprehend that that mistake of the fact at all impugns the authenticity of the charter as to what we consider to be the substantive averment of it, namely, that Warine de l'Isle, the ancestor of John Talbot, had, in point of fact, summons to, and seat in parliament, and that the ancestors, not of that Warine de l'Isle, but of that John Talbot the issue of Margaret, had, from time to time immemorial, sat as lords of parliament. Now if the charter may be considered as authentic evidence to that extent, the question is, whether the charter itself produced any effect prejudicial to the right of inheritance which existed at the moment when the charter was sealed, that is, supposing there existed at that time a barony in fee in abeyance; because there were three co-heirs who might each claim, whether the effect of that charter was to extinguish or to merge the barony in fee under the effect of that grant; and that certainly is the most important feature in the case<sup>2</sup>: but, we believe, that has been settled by such a uniform series of authorities, that at this moment your lordships would have no doubt upon the subject. Lord Coke has so laid it down, and other great judges in other cases; but the most compendious way of

<sup>1</sup> The charter to John Talbot was, as Lord Redesdale observed, a *new creation*; and the fact of his sitting in parliament as Lord l'Isle, under that charter, had no relation whatever to the barony claimed by the petitioner.

<sup>2</sup> It is, perhaps, sufficient proof that the acceptance of this charter did not in any way extinguish the original barony, if by any act of the party entitled to a dignity, excepting treason or felony, a title can be extinguished, that it was impossible for the Crown to have granted the *original* barony to John Talbot, he not being a co-heir of the dignity.

coming at the authorities upon the subject would be to refer to that particular part of the General Report of the Lords Committees upon the subject, which, having been collected with infinite learning and labour, has presented almost every thing that could be learnt upon the subject. Your lordships will find in folio 17 of that compilation, the authorities upon the subject, and the result of them is, that a barony in fee once existing is inextinguishable as long as there be issue of that barony<sup>1</sup>. I take leave to state, that, as a proposition resulting from this series of authorities, that a barony in fee once established to exist in any individual, is inextinguishable by any act of the party who is so entitled—by any act of the Crown, or any act whatever, unless we look to the penal consequences of certain delinquencies, which, stopping the current of blood once ennobled, may produce that effect. In folio 17, the authority of a very great lawyer, Mr. Justice Doulmeridge, is quoted. ‘If a man be created an earl to him and his heirs, all men do know, that although he have a fee-simple, yet he cannot alien or give away the inheritance, because it is a personal dignity annexed to the posterity, and fixed in the blood.’ That was the opinion of this House. The next authority that is adverted to in this compilation is, upon ‘the petition of Robert Villiers claiming the dignity of Viscount Purbeck, upon a motion, that a fine levied for surrendering the honour to the King, might be sent for, it was resolved in the negative: and, proceeding in debate, the

<sup>1</sup> *Third Report on the Dignity of a Peer of the Realm*, p. 17, where the resolution of the House in February, 1640, is cited: “That no person that hath any honour in him, and a peer of this realm, may alien or transfer the honour to any other person;” “and that no peer of this realm can drown or extinguish, (but that it descend to his descendants,) neither by surrender, grant, fine, nor any other conveyance, to the King.” The *Report* then goes on to show, that such was the opinion of eminent lawyers before that time.

House made an order, declaring their unanimous opinion, and resolving and adjudging, that no fine then levied, or at any time thereafter to be levied to the king, could bar a title of honour, or the right of any person claiming such title under the person who had levied or should levy such fine.' The compilation itself, every dictum of which, and the reasoning of which counsel may be justified in considering as good law, goes on to raise the conclusion throughout, that a barony in fee once established in an individual ennobled of blood, can never be extinguished by any act of that individual. The authorities are all collected together, and I need not, therefore, take up the time of your lordships in going further into the detail. In the case of Lord Clifton it was the opinion of the judges, 'that Gervase Clifton, by virtue of a writ of summons and sitting in parliament, was a peer and a baron of the realm, and his blood ennobled; and thus the honour descended from him to his only daughter and heir, and successively after several descents to the then claimant.' Now it was perfectly true, that in the case of Clifton there had been a sitting in parliament under an original writ, within a much more recent period than in the present case—the only distinction between the two cases is, that there had been, up to a more recent time, sittings by the descendants of that gentleman: but I apprehend we have accounted for there being no sitting up to the time of John Talbot, in the reign of King Henry the Sixth. I do not apprehend, that this grant in the reign of King Henry the Sixth is to be considered as a grant in consequence of the claim of writ from that John Talbot. We know, that in the disturbed and unsettled state of the country at that period, it is not likely that those who had to frame records would have quite such regularity of precedent before them, as in times of greater quiet; but your lordships will find that

that charter, or that grant, confirmed by parliament<sup>1</sup>, was a grant specifically appropriated to the existing state of the families at that period, and certainly it was not a grant *de jure*, because the party to whom it was granted had no title—the claim he had, ended in a claim to the bounty of the Crown to fix the title in him, for his mother at that time was alive, consequently it might be competent to the Crown to make another grant of another inheritance to him, without extinguishing or affecting the original title of the barony: that would work no prejudice to any person claiming under the original barony, because, at all events, whilst any heirs of his body were in existence, the ancient barony would be represented by that line of issue, to whom the Crown had almost habitually granted the title; still the title would be borne by the individual who represented the elder co-heir of the original baron.

I confess that I do not know how to deal with the language of this charter, but I trust your lordships will not say, that any language in the terms of the king's grant upon a concurrent subject, which I consider this to be, can impugn or affect a collateral and independent title to the barony. The fact, that it is a grant to Warine de l'Isle, and his heirs and assigns, has already been adverted to. Whatever might have been done in the laxity upon these subjects at former periods, no man would hear it stated, that a title to a seat in your lordships' House could be transferred by assignment to any individual. It would be radically inconsistent with the first principles upon which persons claim that dignity, namely, that the blood once ennobled, must continue ennobled in the descendants as long as it could be traced in any descendant. I therefore submit that whatever inconsistency

<sup>1</sup> See note 2, p. 110.

is found in this charter, must be attributed, and must be confined, to the rights to be derived under the charter itself; that your lordships will not travel out of the charter to bind a distinct right, not connected with any thing to be derived under that charter. We are bound to produce it, to struggle with the difficulties, such as they are; but I have yet to hear from the Attorney-General, how he can make out in argument, that any difficulty arising upon this charter can affect the title to claim under the barony. If it would be clear, independent of any such charter, the existence of that charter can have no effect upon our claim to this title, I am bound to admit we must show a title, independent of any thing to be derived from this charter, although we may be entitled to refer to it as evidence of the sitting of Warine de l'Isle in parliament. In the obscurity of language in which these documents are involved, it would be consistent with the construction, or conversion rather, of the Latin idioms here used, into the English language—that it being a grant not to them, because they had been lords of Kingston l'Isle; but being at that time lords of Kingston l'Isle, it was a grant coupled with a condition, that that grant should exist during so long as they should be lords of Kingston l'Isle: with reference to that, I do not know that there would be any inconsistency or any thing contradictory to the rules of parliament in the Crown granting such a title. It is a title coupled with a condition, which will be extinguished upon the forfeiture of the condition, namely, that the party so ennobled should continue so during the time that he and his posterity should be lords of Kingston l'Isle. It is very true, that here is a mistake of the family—one can hardly call it a falsehood, because falsehood implies the perversion of a fact for some indirect purpose; here the perversion of

the fact was not very material, whether Warine de l'Isle, and his ancestors had from time immemorial been lords of the manor of Kingston l'Isle; for at the period when this charter was granted, they were lords of the manor of Kingston l'Isle, holding immediately from the Crown. It appears that the family of De l'Isle, in ancient times, had had the manor of Kingston l'Isle granted them, to hold in chief of the Crown; and this particular manor had generally gone into the younger branch—if I may so assume it—of the family of De l'Isle, and had been held by them by services to be performed to the lord, who held of the Crown in chief: but some time in the reign of Henry the Fifth—the particular period we have not been able to trace—this manor had got back again into the hands of the Crown, and was holden at the period when this charter was granted of the king in chief.

*Lord Redesdale.*—It was holden of the king in chief as an escheat.

*Mr. Attorney-General.*—It is so found.

*Lord Redesdale.*—It was held of the king as an escheat.

*Mr. Hart.*—Your lordship's intimacy with the whole of this subject will puzzle those not so deeply versed in it. Upon the mention of that it does not occur to me what would be the difference by holding it by escheat of the king.

*Lord Redesdale.*—All the ancient baronies were held of what might be called the demesnes of the Crown, but whatever became of escheat to the Crown in any subsequent period, a different account was rendered. It was not part of the demesnes of the Crown, but it was accounted for as an escheat, and it might be granted again by the Crown, by any tenure the Crown thought fit to attach to it. That could not be a barony; there is no pretence for saying that the Crown created it as a barony subsequent to the times of which we have any clear record.



*Mr. Hart.*—I am aware of that; I was not reasoning to that extent; I was only accounting for how naturally such a mistake might have crept into the recital of this charter, not attempting to reason it higher. It would be a waste of time to attempt to show that this or any other barony depended upon the tenure of the land *qua* seisin of the soil, that subject has been so learnedly discussed.

*Lord Redesdale.*—It is scarcely possible the Crown could have made the mistake if they looked into the records, because the recital is, that they held it from time beyond memory, that would go beyond the time of Richard the First, and it must have appeared in all the accounts in the exchequer that this was held as an escheat, and not as part of the ancient demesne of the Crown.

*Mr. Hart.*—It still resolves itself into this question, whether it was not a very likely mistake for the clerk of the Crown to fall into it, and whether we have not instances, showing that officers of that kind may fall into inadvertencies. It is not very material, whether it is on one side or the other, as I was only reasoning it upon the principle of showing that this was a very natural mistake, and cannot impeach the argument drawn from the fact of Warine de l'Isle sitting, and I cannot carry it further. If it works no benefit to the petitioner's case, I am content that it should work no prejudice to it. If I am permitted to neutralize it, I would merely take up the fact to show that this family, from the period when this charter was granted, have uniformly, with a great degree of anxiety, kept up, as attached to them, the ancient dignity of De l'Isle, as a peerage, not the identical barony, but the ancient title of De l'Isle; and that, with great submission, affords a very strong ground of presumption, that in all times, not only the individuals themselves, but the Crown, and those who were the advisers of the Crown upon subjects

of this description, felt that there was something like an inherent right in the blood of the original Warine de l'Isle, to keep up this title of De l'Isle, to the exclusion of all the others, who, not being connected with this blood, might have sought for, and asked of, the bounty of the crown, a grant of the title *eo nomine*.

The pedigree shows that, although the family of De l'Isle was almost drowned in the superior dignity of their matrimonial connections, and the great names that figure in this pedigree, yet that they very carefully reserved, as far as they could, as an exclusive benefit belonging to them, the dignity and decoration, as I may call it, of this title. Your lordships will find that Ambrose Dudley, who died without issue in the 32nd of Elizabeth, was created Baron de l'Isle and Earl of Warwick. That creation might concurrently have been holden with any other title as it was; but still, it being in limitation to him personally, it was extinguished by his dying without issue. After that a collateral descendant of those Dudleys, Earls of Warwick and Leicester, upon the extinction of their male issue, the first individual who connected himself with that family, namely, Sir Henry Sydney having issue Sir Robert Sydney, he was created Baron Sydney, Viscount l'Isle, and Earl of Leicester: he therefore at that period asked for and obtained a concurrent grant of the viscounty of l'Isle and the barony of Sydney. That of course descended to his son Robert, afterwards Earl of Leicester. He having died, Philip Sydney, who was his eldest son, became Viscount l'Isle and Baron Sydney.

Your lordships will find that his elder son having died without issue, his second son Robert Sydney became Viscount l'Isle and Baron Sydney, and then his descendant Philip Sydney became Earl of Leicester, Viscount l'Isle, and Baron Sydney, under the creation of that barony. It then

travelled down in this way to Joscelyn, who died without issue male, and then all the lineal descendants in the male line had failed. Sir John Sidney represents all those persons who have successively, under this grant of the Crown, borne the title of Viscount and Baron l'Isle. I therefore hope that this case is not to be assimilated to one, where parties, who might have had a claim to enter this House, have abstained from enforcing that claim, till the lapse of time may have produced such obscurity upon the subject of their claims, that you had great difficulty in dealing with it: but I trust I have established a distinction between this case and one of the ordinary mass of individuals, whose ancestors, or alleged ancestors, may have been summoned to parliament at a very remote period, and from the time they have been so summoned, have been content to remain in the rank of commoners, without asserting a title to enter this House. The distinction between families of one description and the other would be very marked; and although I cannot but be pressed with the inconvenience put to me, of permitting a claim to be sustained after such a length of time, where there has been no sitting under the alleged title, yet taking that to be the fixed general rule to be established, no general rule for the purposes of justice here or elsewhere can be so inflexible as not to yield to circumstances of distinction, fairly established and pointed out as raising a distinction<sup>1</sup>. Now, in this case,

<sup>1</sup> It is submitted, that this idea of "convenience" and of the rules of justice "yielding to circumstances," is at once novel and dangerous; and it is difficult to conceive it possible that a Committee of the House of Peers could be influenced in its judgment by any other feelings than those of strict and impartial justice, according to former decisions of that House, and according to the constant practice of former ages. Illustrious as Sir John Sidney's descent undoubtedly is, and unparalleled as are his claims to a title of peerage in consequence of that descent, these were points with which the House had nothing whatever to do, excepting as his descent proved him to be eldest co-heir of Warine de l'Isle summoned to parlia-

if it were possible, by way of pedigree, to account for the circumstance of this ancient barony not having been called into action as an ancient barony in fee, the pedigree and other circumstances throughout afford a sufficient reason."

[*Mr. Hart* then corrected his statements relative to the Earl of Warwick having succeeded his brother the Earl of Leicester, and some other errors into which he had fallen<sup>1</sup>. He repeated his former argument on the meaning of the inscription on the monument of Lady Leveson<sup>2</sup>, and commented on the fact of the ancestors of the petitioner having always exercised the patronage of the hospital founded by the Earl of Leicester, at Warwick, as evidence that they were his heirs; and concluded by expressing his hopes that the petitioner had established his claim.]

• *Mr. Shadwell*.—My lords, I am also of counsel for the claimant, and it is material to call your lordships' attention to the circumstance, that we prove by our evidence, that Gerard de l'Isle had summons once to parliament: in addition to that, we prove he died in the 34th of Edward III., and there was no intermediate parliament. We then prove that Warine de l'Isle had summons six times to parliament in the 43d, 44th, 46th, and 47th, and twice in the 49th year of Edward III.

*Lord Redesdale*.—Do you account for his not being summoned after the death of his father.

*Mr. Shadwell*.—We have no distinct fact to account for it: it must be left therefore to conjecture; we also prove that

ment from the 43rd Edw. III. to the 5th Ric. II. If that fact entitled him to be adjudged the co-heir of the barony so created, it would have entitled any other person who was the heir of a person summoned at that period, to a similar decision, whatever might have been the station of those intermediate ancestors through whom he claimed.

<sup>1</sup> See note, page 91.

<sup>2</sup> See note, page 90.

Warine de l'Isle was summoned eight times<sup>1</sup> to parliament.

[*Mr. Shadwell* then repeated the facts as they appeared in evidence; and, alluding to the entry of the Rolls relating to the Parliament on the morrow of St. John Port Latin, Wednesday, 7th May, 5th Richard II., he observed:—]

“ Your lordships will observe, that here there is an express mention that many of the lords and prelates who had been summoned had not attended, and assigning that as a reason why the parliament should be further adjourned. Then you have had the Roll preceding, distinctly taking notice that on the Thursday there were present the prelates, duke, earls, barons, and others who had the said summons. I am quite persuaded, that it might be true, that out of the number of those persons summoned, some did not attend. It may be so, but when you recollect that here you have a parliamentary declaration upon the Roll, stating all did attend, you are bound to take that as a fact notwithstanding it might be possible it was not strictly true. You are to take it, that the duke, earls, and barons who were summoned did attend; we have a parliamentary declaration, that all who were then summoned did attend. In many of the Rolls about the same period it is stated that some of them did not attend, and that some came armed; they were not at all times in that peaceful state which suited the assembling of a legislative body. Here the duke is named by name the uncle of the king, he is named as a person summoned; the record must be taken to be correct as to that; and why should you not take the record to be true as to the earls and barons who are said to assemble on the Thursday,

<sup>1</sup> After the accession of Richard the Second, and six times during the reign of Edward the Third.

when it is before said a part of them assembled. I therefore submit, we have by this Roll as precise evidence of the attendance of De l'Isle as in the Botetourt Peerage by that record, which stated that the ancestor of that family was among the triers of petitions of that day; it was a matter that subjected the parties to pains and penalties, provided they were summoned and did not attend. The very Roll I have read, shows that there was a peril which did hang over the heads of those who were summoned, and did not attend. In addition to that, your lordships are aware of the remarkable proceeding as to the Bishop of Winchester, in 4th Institute, 17, where he was proceeded against for not attending to the writ of summons<sup>1</sup>; the bishop pleaded to the jurisdiction, and the plea was held good; but these are the proceedings, showing it was considered a penal thing for a party to be summoned and not attend. In addition to that, there is the case of Lord Stourton, and Lord Mordaunt, stated in Noy, in p. 102: this is the whole of the Report:—"The Lords Stourton and Mordaunt. They were brought to the bar now being held for a contempt to the king for not coming to parliament by prorogation the 5th November, when the gunpowder treason was intended; and it was greatly sus-

<sup>1</sup> The bishop was summoned to attend a parliament at New Sarum, on Sunday next after the feast of St. Michael following, i. e. 2nd October 1328, by writ tested 28th August, 2nd Edw. III. 1328; and by writ tested at Walyngford, 11th November, in that year, the Sheriff of Southampton was commanded to have the said bishop before the king, in whatever part of England His Majesty might happen to be, in the octaves of St. Hilary, "ad respondend' nobis quare cum in parlamento nostro apud Novum Sarum nuper tento p' nos inhibitum fuisset ne quis ad idem Parliamentu' sum' abinde recederet sine licentia n'ra; idem ep'us durante Parlamento p'd'c'o absq' licentia n'ra ab eodem recessit in nostri contemptum et contra inhibic'oem n'ram." *Appendix to the First Peerage Report*, p. 389. The proceedings in this case are given at length in the 4th Institute, p. 15. The bishop appeared in person, and pleaded that the charge came within the cognizance of parliament, which was allowed. See *Year Books*, 3 Edw. III. 19, 32.

pected that they knew of the plot, because they were Papists, and their excuses were frivolous, and Stourton was fined to 6,000 marks, and Mordaunt to 1,000 marks<sup>1</sup>. So that there

<sup>1</sup> This case is more fully reported by Moore, 778. It appears that the cases of the Earl of Cornwall and others, 4 Hen. III., who, for quitting parliament without license, had their lands seized; the statute 25th Edw. III. "que p' non venter lours terres ne serront seises mes une fine impose p' le contempt;" and the statute 6 Hen. VIII. by which "burgesses q'ux ne veignour ou recedront serront fine pur le contempt," were cited. Of the proceedings against the Earl of Cornwall the *Feders* does not present any notice. The only statute of the 25th Edw. III. which relates to fines is cap. 6, by which it is enacted, that the temporalities of bishops shall not be seized for contempt, "but that all justices who may pronounce judgment against them, shall receive, for the contempt so judged, a reasonable fine." The statute 25 Hen. VIII. cap. 16, relates exclusively to "knights of shires, citizens for cities, burgesses for boroughs, and barons of the Cinque Ports, and forbids them to depart from the parliament to which they may be elected, until it be finished, upon pain of forfeiting all their wages, unless they have license of the Speaker and Commons. See also notes, pp. 63, 64.

Some important entries on this subject on the *Lords' Journals*, escaped the attention of the Committee. On the 20th December, 7th Hen. VIII., their lordships determined that any peer who did not attend should pay ten pounds, vol. i. p. 56. When the lords agreed to subscribe for the relief of poor soldiers in the 35th Eliz., they determined that such peers as had not been present during the whole Session should pay twice as much as the others, vol. ii. p. 187. In the 4th Jac. it seems that it was the custom for such lords as came in after prayers, to pay to the Poor Man's box, an earl 2s, and a baron 1s., for each omission; but on the 26th March in that year, their lordships ordered that those peers who did not come at all, or send a proper excuse, should for every default pay double what those did who came after prayers. *Ibid.* p. 401, which order was repeated in the 12th Jac. *Ibid.* p. 699. On the 19th April, 8 Jac. I. 1610, the following entry appears on the Journals. "The Lord Chancellor declared from the king that His Majesty hath taken notice of the slender appearance here in the house yesterday, and that he taketh it in ill part that his service in that behalf is so much neglected. Then his lordship took occasion out of the words of the writ directed to every earl and baron to show the great charge and commandment of attendance contained therein, and gravely pointed at the greatness of the contempt, which, by infringing thereof, is committed. Lastly, he touched the heavy punishment which for such contempts, hath been heretofore, and by justice may be inflicted upon offenders in this kind. He concluded with a grave exhortation to the lords, that except in case of sickness or other necessity, they could not be absent from the House; affirming withal, that in such cases as aforesaid the excuse of any peer, a member of this House, is to be admitted. The absence of divers earls, bishops and barons, excused particularly

is the fact of an actual fine imposed upon the lords because they were summoned to parliament and did not attend.

*Mr. Attorney-General.*—Where was that proceeding?

*Mr. Shadwell.*—In the Star Chamber. In addition to that, your lordships will allow me to call your attention to the First Report of the Committee of this House upon the Dignity of a Peer, in page 54.

[Mr. Shadwell then read the statute, 5 Ric. II., which has been before noticed <sup>1</sup>, to enforce attendance in parliament.]

“The Report goes on to state, ‘this statute (as it appears both in the Parliament Roll, and as transcribed on the Statute Roll) referring to ancient usage, it would be important to discover, if possible, what that usage was; of this however the Committee has found no distinct evidence beyond what has been already, and is after stated.’

“Whatever effect that statute may or may not be supposed to have as an act of parliament, it is certainly evidence that there had been a usage prevailing before the 5th of Richard the Second, by which persons, who were summoned to parliament, were bound to come; and were liable to be amerced and otherwise punished, according to what had of old time been used before in the kingdom.

There is a manuscript in the British Museum, among the Harleian Collection, in which there is a list of fines imposed on peers for their non-attendance in parliament, and those fines are specified in the Rolls of Parliament. In the 31st

by several lords for sickness and necessary business: and for some it was alleged that they had leave of absence from His Majesty.” *Ibid.* p. 579. The Roll of the members entered on the proceedings of that day, consisted of twenty three bishops, twenty-three earls, three viscounts, and forty-seven barons; and on the preceding day, when the paucity of attendance excited the displeasure of the king, twelve bishops, six earls, and fourteen barons were present, just one third of the whole number.

<sup>1</sup> See note, page 63.



and 32nd of Henry the Sixth, No. 46, there is a record of a fine imposed on several peers for absence without leave, each being amerced according to his degree<sup>1</sup>. Then, when we have this species of evidence, with a record of the usage, and the fact of a list of fines, and the circumstance of fines actually imposed in the time of Henry the Sixth and James the First, this conclusion is inevitable, that those who were summoned to parliament, were by law bound to come; and, therefore, supposing we had not the actual evidence which I have stated from the Parliament Roll of the 5th of Richard the Second, that Warine de l'Isle did attend, the strong presumption, grounded upon the circumstance that it was his duty to come, and that there was a fine that might be imposed in case he did not come, would lead us to believe that he did come. There is also a passage in Mr. Cruise's book upon Dignities, stating, that a person, on account of his infirmities, was excused from attendance in parliament<sup>2</sup>: therefore I say, if it was to be considered only upon the ground of the obligation of law, the presumption is warranted, that every party who was summoned did attend. There is another circumstance as applicable to the family of De l'Isle: it appears, from what is stated by Dugdale, that this family was a family in some favour with Edward the Third, and Richard the Second; and, therefore, it is reasonable to presume, as they always enjoyed the sunshine of royal favour, that whenever the monarch summoned them, they would very readily come to his parliament. Dugdale says, in the 33rd of Edward the Third, he was in the wars of France with the king, and continued with him after the peace of Bretagne: then, he says, Warine de l'Isle, who was summoned in the 43rd Edward the Third, was made

<sup>1</sup> See note, page 63.

<sup>2</sup> See note, page 64, for many instances of the kind.

governor of Portsmouth in the 1st of Richard the Second, and assisted at the king's coronation. I mention these circumstances, though they are not strictly speaking evidence, but it is an historical statement which we must receive—because we have no better evidence. It is a representation that the father and son were persons enjoying the favour of the king, and, therefore, the reasonable presumption is, that when they were summoned, they would attend the parliament to advise and assist the monarch. I should conceive—unless there can be some evidence brought against this species of case—we do make out the fact, that Warine de l'Isle did actually sit in parliament. Now if Warine de l'Isle did actually sit in parliament, I apprehend it must be concluded, that that carried a barony in fee. I need not detain you, by repeating what is stated by Lord Coke in different parts of the Institutes, and in Lord Abergavenny's case, and in other books; but I conceive that that Report which your Lordships' Committee has published, must be considered the greatest authority upon the subject, as having collected together and condensed the law; and, therefore, where I find a proposition distinctly stated in this Report, founded not in conjecture, but upon cases adjudged, I must conceive that proposition is a legal one and true. Your lordships will find—speaking of the judgment given by Lord Chief Justice Bramstone—which is stated in this manner:—‘that the title to any barony must be by record, so that whosoever shall make a title to a barony must resort to the record, and begin his title there; and so must make himself heir to the first person ennobled by that record, which the sister cannot do, notwithstanding the possession of her brother; for she is not heir to the first ancestor, but the brother of the half blood.’ It is evident from the language thus attributed to the Lord Chief Justice Bramstone, that he conceived, if his words are truly reported, that a barony then existing must have

commenced by some mode of creation, ennobling the person so made baron, and that the creation must be proved by some record of the fact of creation. That might be by a patent of creation, or by a writ of summons to parliament, issuing by the grace or favour of the Crown, and sitting thereupon in parliament, which now has been deemed to create an hereditary right; or by a succession of writs, from which a prior creation, either by patent or by writ, might be inferred: and I point out the latter part of the sentence to your lordships' attention, because it cannot have failed to have struck you, that we have in this case a succession of writs of a double kind—a writ of summons to the father, and repeated writs to the son—and a summons to the father in one king, and a summons to the son in the reign of that king, and that king's successor; so that there is a strong inference arising from the succession of writs, that the party summoned did sit.

I am aware that in that Report notice is taken of the fact, that there appears to have been some fluctuation in the opinion of lawyers as to what should be the effect of a summons to and sitting in parliament; and in page 239 of this same Report, it is said, that 'the result of the information to be derived from the two collections last suggested, will probably be to show, that during, and perhaps before, the reign of Edward the First, tenure by barony was not considered as authorizing any layman to demand as a right, a writ of summons to parliament; and that before the reign of Richard the Second, a writ of summons to parliament, and sitting in parliament, under such writ, were not considered as giving an hereditary right to the descendants of the persons so summoned; and that probably this rule of law, as it may now be considered to be, was not adopted till long after the reign of Richard the Second.' There is every reason to suppose that that conclusion stated in this report

is correct<sup>1</sup>; but taking it to be correct, the question is, what is now considered the law of this day; because your lordships are well aware that upon many points there has been a fluctuation of opinion, that cases have been decided both ways<sup>2</sup>, and on an appeal to the highest tribunal, that tribunal has decided what the law is, not by enactment, but by a declaratory decision, and it must be taken that the law always was that which it has been finally declared to be; and I conceive that the fact that there was some variety of opinion upon this point, does not affect the law, provided the highest authorities of the kingdom consider the law to be—that a writ of summons and sitting upon it did create a barony in fee.

*Lord Redesdale.*—It certainly is now the law that a peerage cannot be surrendered to the Crown, but unquestionably peerages were surrendered to the Crown as recently as the time of Henry the Eighth.

*Mr. Shadwell.*—All we can say is, that those were illegal acts, and if one wanted to refer to a period where things were done with the greatest regard to settled rules, it would not be to the time of Henry the Eighth.

*Mr. Attorney General.*—Till the time of Henry the Eighth.

*Lord Redesdale.*—Viscount Purbeck's case was one of them.

*Mr. Shadwell.*—I have that case in my hand. It appears 'upon a motion that a fine levied for surrendering the honour to the king might be sent for, it was resolved in the

<sup>1</sup> Reasons have been given in a former note against the correctness of this conclusion. See notes, pages 101—108.

<sup>2</sup> So far from there being any thing which can be called a decision, in which the principle has been denied that a writ of summons and a sitting under such writ created an hereditary barony, it has been recognised by at least twenty judgments of the House. *Ibid.*

negative, and proceeding in the debate, the House made an order, declaring their unanimous opinion, and resolving and adjudging that no fine then levied, or at any time thereafter to be levied, to the king, could bar a title of honour on the right of any person claiming such title under the person who had levied or should levy such fine.' Therefore, though there might in early times be a departure from the law and legal principles, yet I apprehend we must now consider if the matter had been properly discussed, and there had been no overwhelming interference of any power in those days, their ancestors would have had in fact no right to do what they did; but in those early times things were done in a manner not altogether consistent with the strictest regard to justice.

With respect to this matter, I should take notice, that there is very great reason for allowing a succession of writs of summonses to be of themselves in a great degree evidence of actual sitting, because there were in the early times no journals kept in this House, by means of which the sitting could actually be proved.

There is a passage in the Year Books, which is shortly alluded to in the First Report of your Lordships' Committees, page 395. I have copied the passage from the Year Book as it stands at length: it was in Hilary Term, the 25th Henry the Sixth. 'In the King's Bench, a person summoned on a grand jury in attain, and one of the grand jury challenged himself, inasmuch as his ancestors appeared to be baronets.' That is the word in the report.

*Lord Redesdale.*—It means barons.

*Mr. Shadwell.*—No doubt of it, 'and lords of parliament; and that they had their place in the same House of Parliament; and this matter was found by six of the jurors appointed triers for that purpose; and he therefore prayed allowance of his challenge. But Fortescue, the Chief Justice, says, we cannot allow that without a writ testifying it,

for we ought to be assured by matter of record of your challenge, or otherwise we cannot allow it, to which all the court agreed, therefore he was drawn for another cause<sup>1</sup>. That is an authority to show that the writ of summons itself would prove the fact of the sitting in parliament, because there was nothing else whatever to prove the sitting in parliament than the writ of summons, because your lordships know it was only rarely that any notice was taken in

<sup>1</sup> The original is in these words :—" En attaint en bant le Roy le grand jury app'ust, et un del grand' jury chall' luy m', entant q' son anc' ussent e'e Barronets et S'niors de Parliam't, et q'ils ont eu lour place en m' le meas' del parliam't. Et cest matt' fuit trove p' vj triors de m' le jury : purq' il pria allowance de c' chall', et q' il purr' aller a Dieu," &c.—*Fortescue*. " Nous ne poim' c' allower sans b're testifiast c' car no' devons estre asserte p' matter de record de v're chall', ou autr'm't ne poim' c' allower. Ad quod tota curia concess. Et puis il fuit trait pur autr' cause," &c. Selden, in his *Titles of Honour*, p. 608, considers the word baronet in this entry a mistake for *banneret*. In the 2nd Edw. III. John de Wolverton petitioned, stating that he held of the king in chief by barony, in consequence of which he ought not to serve on juries and assizes, but notwithstanding which he had been put on a jury. He therefore prayed a writ to the judges that he might be released, so that it might not prejudice him and the other "Grantz" of the land who also held by barony. The treasurer and barons of the exchequer were thereupon ordered to certify to the chancellor whether he held by entire barony.—*Rot. Parl.* vol. ii. pp. 19, 20. The ancestors of this John de Wolverton were barons by tenure, but no person of that name was ever summoned to parliament: this record tends therefore to establish the fact so often and so successfully pressed in the *Reports of the Lords' Committees on the Dignity of a Peer of the Realm*, that after the 23rd Edw. I., persons who held lands by barony and in chief of the Crown, were not intitled *ex debito justitiæ*, in consequence of such tenure, to a writ of summons to parliament, though they appear to have ranked among the "Grantz" of the country. A similar case in the 48th Edw. III. is thus reported: "Rauf Everden Chivaler, port briefe de Chaunc', et auxi briefe de Privi Seale as justic', rehers' que il fuit baron, commaundant que ilz lui duissent discharger de serement in Jus' d' Ass' ou recogn' que cunque pour ceo que les Barons ne duissent pas jurrer en nul enquest ne recognic' sauns lour volente, par que &c. *Bellnap* opposa s'il tient par baronie, et s'il et ces aunc' aver' tenus de tout temps par baron, et s'il aver' tout ceo temps *venus a Parlement come baron duist vener*; et il dit, que il tient par certain partie d'un baron, et que il et ces aunc' avoient tenus issunt tout temps, &c. Et puis par bon avyse il fuit discharge tout oustrement et sic vide." *Year Books*, m. 48 E. 3. 30 b. No person of the name of Everden was ever summoned to parliament as a baron; and this case corroborates the opinion that such summons was not the necessary consequence of holding lands by barony in the fourteenth century.

early times of any party who had actually been once summoned by writ, performing his functions as a peer of parliament. But Fortescue says, I object to the finding; produce your writ, testifying that you were summoned, because there is no indorsement upon the writ that the party did actually appear; and therefore it must be a conclusion in the mind of Lord Chief Justice Fortescue that the production of the writ proved the fact of the sitting.

*Lord Redesdale.*—It would prove it sufficiently to exclude him from serving as a juror, and the writ being issued, he would have a right to his writ of protection.

*Mr. Shadwell.*—I understand he did not say that he himself was the person—the party there did not claim to be exempt because he had been summoned, but because his ancestors had been. I admit that what your lordship says, would have been most poignant and pressing in the case, provided the party had said he was summoned; but he says my ancestors have been summoned, and therefore it must be taken they were peers. Now the question is, what is proof of the fact that they were peers:—the result of the opinion of Lord Chief Justice Fortescue is that they were summoned.

*Lord Redesdale.*—It would prove that he thought that a writ of summons to parliament, at that time, did not give a right to sit to the heir<sup>1</sup>.

*Mr. Shadwell.*—I do not pretend to dive into the breast of Lord Chief Justice Fortescue further than I have stated.

*Lord Redesdale.*—It is a very loose case.

*Mr. Shadwell.*—It shows what his opinion was at that time upon that point;—I should say we have quite sufficient to show the fact that there actually was a sitting in consequence of a summons. There are certainly some other points it is material to deal with in this case: one of your lordships made an observation this day, that in the case which has been

<sup>1</sup> It is difficult to understand how such an inference can be drawn from that case.

printed for the claimant, there is a great variety of matter of an historical kind which is not quite correct, and which ought not to be considered as part of the case on which the claim is founded. I believe those who drew this case did not mean to state that preliminary matter as part of the circumstances to be offered in proof, upon which the claim should be founded ; but being in possession of some remarkable facts regarding the family of De l'Isle, it was thought right, as a sort of emblazonment and illumination of the case, to head the story of this illustrious family with the earliest account that could be given : and it is stated in page 2 of the Case, which seems to remove every sort of objection to the statement, that 'it has been deemed right to lay before your lordships this account of the origin of the family in which the dignity now in question commenced, although it refers to persons and transactions not within the immediate range of the matters proposed to be proved, therefore we state that we consider this to be rather ornamental than absolutely necessary.'

*Lord Redesdale.*—You have proved that Warine de l'Isle was the son of Gerard : whereas, on the contrary, you make him to be the son of Warine ; and you make Warine the younger brother of Robert de l'Isle, who claimed to be the heir of Margaret de Ripariis ; you will find, if you advert to the dates, that he could not possibly be the younger brother of that Robert de l'Isle.

*Mr. Shadwell.*—I am aware of that, my lord.

*Lord Redesdale.*—He was of the family of De l'Isle, because it appears that Robert de l'Isle held the estates of Margaret de Ripariis, consequently he held them as a descendant of Warine de l'Isle ; probably he was a younger branch of that family : the practice then was to provide for the younger branches of the family, and make it available out of the estate of the elder. I do not mean to



say that your pedigree is incorrect; although it is extremely probable that Warine de l'Isle was descended from Warine Fitz-Gerald.

*Mr. Shadwell.*—In the Third Report, page 26, as connected with the question of sitting, your lordships, in Ralph Frescheville's case, state, 'although it does not appear that Ralph Frescheville, summoned to parliament in the 25th of Edward the First, did actually sit in parliament, the contrary does not appear; and it would be difficult to show actual sitting in parliament of many persons summoned before the journals of the House were regularly kept; except, as the names of particular peers may have been inserted in the parliament Rolls for particular purposes,' I call attention to that circumstance, because it goes to show that the succession of writs does afford evidence that parties did actually sit, and that it was impossible always to prove the actual sitting by the records.

[*Mr. Shadwell* then explained why there had been no person summoned to parliament after the death of Warine de l'Isle in the 5th Ric. II., in nearly the same words as Mr. Hart had done, and pointed out that in the line of the eldest co-heir there had always been a high title of peerage, so that there was no reason why they should have claimed this barony.]

Now I should conceive that we have in this case established at least as strong a claim to the favour of the Crown and the approbation of your lordships' committee to this peerage of De l'Isle as there was in the Botetourt case; and it may be recollected that in that case the summonses commenced with the time of Edward the First and were carried down to Richard the Second, and it was upon the sitting in the time of Richard the Second—upon the very actual sitting in Richard the Second—that the peerage was held to rest; and it was in consequence of there being actual proof of sitting,

by the discovery of some important Roll, that that peerage was granted to Lord Botetourt<sup>1</sup>.

Observations have been made by Mr. Hart upon the patent of Henry the Sixth. It does not appear to me that I can add any thing to what he has said—it only shows that there was a title granted, and it shows there was a wrong reason assigned for the title; but it certainly is a material document in one respect, so far as it avers and takes notice of the fact that the parties actually sat in parliament and had pre-eminence in parliament, pointing out the acknowledged dignity of the family.

*Lord Redesdale.*—The patent would be evidence of a time beyond memory.

*Mr. Shadwell.* — We cannot look upon the patent as testifying any thing fairly beyond that as to what is stated of the manor of Kingston l'Isle. In the Third Report, there is a very elaborate discussion upon this very title of De l'Isle, and it certainly does form one of the most extraordinary features in the history of the nobility of the country; and in that Report, we, on the part of the claimant, have found that which would have saved us a great deal of trouble, because the Report states the fact of Gerard having been summoned, and the fact of Warine having been summoned, and the fact of there being no parliament in the 32nd and 33rd Edward the Third, and no summons as to Warine de l'Isle; and in page 195, it is stated 'that Gerard de l'Isle died in the 34th of Edward the Third, his son, Warine de l'Isle was not summoned immediately after his death, or until the 43rd of Edward the Third; from which time he seems to have been regularly sum-

<sup>1</sup> The only proof of sitting received in the Botetourt case, was that of the 50th Edw. III., when John de Botetourt, the second baron, was one of the mainperners of Lord Latimer, *Rot. Parl.* vol. ii. p. 326. The proceedings in the Committee of Privileges relative to the proof of sittings in that claim will be noticed hereafter.

moned as long as he lived.' The Report goes on to investigate very accurately the circumstances connected with the Manor of Kingston l'Isle; and it does sufficiently appear, from what is stated, that that manor could not be a manor held of the Crown in such a sense as that any persons could be held to be Lords de l'Isle by virtue of the Manor of Kingston l'Isle; and it struck me very forcibly that it was absolutely impossible it should be so, because the title we are seeking is a title whose meaning is developed by the Latin expression "De Insula;" it was a title borrowed from the Isle of Wight, and therefore could never be borrowed from Kingston in Berks.

*Lord Redesdale.*—Not the Isle of Wight, because there is the name of the De l'Isles of Rougemont.

*Mr. Shadwell.*—There seems to have been a gradual departure from accuracy of writing to an error, but that the title is "De Insula," I take it, appears from the documents before your lordships; therefore, it could hardly be said to exist in the county of Berks. The Manor of Kingston l'Isle is totally distinct from De Insula that originally gave the title.

*Lord Redesdale.*—The addition of Kingston appears to be quite a modern addition.


*Mr. Shadwell.*—Quite so; and one sees how strangely it was fabricated. It was first "De Insula," and then "De l'Isle," so that the parties have gradually forgotten what was the real origin of the title, and finding the name of l'Isle associated with the Manor of Kingston or Chingestun, it appears that there they gave out the description of a manor by the name of Kingston l'Isle; and therefore we cannot but see that the parties who did enjoy titles in those days cared very little about the truth of the fact, provided they could gratify their vanity as to their possession.

One of your lordships threw out an observation how far

it might be considered that the creation of a new title by patent could affect a title in abeyance; and it certainly strikes one at first as a proposition of very great weight, namely, that when a title was in abeyance the acceptance of a new title might have that effect. It was with reference to the circumstance I have pointed out, that the original title was the title "De Insula," and that the other was a different title: but assuming that the title granted by the patent was the same as that which was described as "De Insula," I should call your attention to what has been decided. In the Third Report, page 24, the case of Lord de la Warr is noticed, which was determined by the House in the 39th of Elizabeth, and reported by Sir Edward Coke; and may also have been considered as having given sanction to the opinion in the case of Lord Clifton. Having stated, in page 20, that the question in the case of Lord de la Warr was a question of precedency on a petition of Thomas, styling himself Thomas la Warr, Chevalier, Lord la Warr to the queen, then the facts of the case are stated; and the question was really in that case, whether the acceptance of a new creation had disabled the party, who subsequently claimed, from taking the original title; and it appeared that ' the matter was referred by Queen Elizabeth to the House, and by the House to a Committee, who called to their assistance the two chief justices and other judges. To the claim of Lord de la Warr two objections were made, first, that the disability of his father prevented descent to him of the honour of his great grandfather; and, secondly, that his father had accepted a new creation from the queen, which new dignity had descended to the petitioner, which he could not waive. It was resolved by the judges that the disability created by act of parliament was personal and temporary, operating against William, the father of the petitioner, during his life only, and that his heir, after his death, might claim

as heir to him or any of his ancestors, and that the acceptance of the new creation could not injure the petitioner, so that on the death of William, the old and new dignities descended together to the petitioner, and the old should be preferred.' Now in this case, the old title has been in a state of abeyance, consequently the acceptance of a new title could not have the effect of destroying a subsisting old title in a state of abeyance. Mr. Cruise, in his book, at page 115, takes notice of the barony of Willoughby de Broke. 'It was resolved by the House of Lords that the grant of a new barony of Willoughby de Broke to Sir Fulk Greville and the heirs male of his body, by letters patent, he being then in possession of the ancient barony of Willoughby de Broke, which had been created by writ, did not destroy such ancient barony, but the same continued and descended to his sister and sole heir, and from her to Sir Richard Verney, who was seated in the House of Lords according to the date of the ancient barony;' and Mr. Cruise, in the same book, quotes a passage from the Second Institute, 594, in which Lord Coke says, 'that the greater dignity doth never drown the lesser dignity, but doth stand together in one person; and, therefore, if a knight be created a baron, yet he remaineth a knight still; and if the baron be created an earl, yet the dignity of a baron remaineth, *et sic de ceteris*,' and therefore I conceive here is abundant authority to show that the circumstance, that there were at different times grants made by patent of titles, equal to, and greater, than the title of Baron de l'Isle, which was acquired by writ and sitting, will not have the effect of destroying a title so created, which was then in abeyance.

In cases of this sort, it is of much more importance to have positive authority, than that the matter should rest upon the weakness and vagueness of general argument; and I conceive that these two cases must be taken as concluding that



part of the case, and that your lordships cannot, after what has taken place in this House, upon these matters, referred by the House to their Committee, say that this patent destroyed the title that existed previously, by means of the writ and the sitting<sup>1</sup>.

It appears to me that there is but one other point that can be considered as a matter *prima facie* creating any doubt, and I should not have noticed that point, but from the circumstance that the Attorney-General, in his Report, has noticed it himself, namely, the circumstance of what effect was produced by the attainder of the Duke of Northumberland, who was one of the co-heirs. I should say, as to that point, whatever difficulty might have been created by such a circumstance, it is in effect concluded, because independently of that which took place in the case of the barony of Beaumont<sup>2</sup>, which is stated at length by Mr. Cruise at page 214, who gives the judgment of Lord Chief Justice Eyre, of which the manuscript was given by the late Sir Thomas Plumer to Mr. Cruise, and he gives his opinion decidedly, that notwithstanding the circumstance that one of the co-heirs was attainted, yet there being other co-heirs, it could not have the effect of preventing the operation of the descendible quality of the title so in abeyance. The judgment is stated at length in that book, but it would be of very little value to read it, because the same point happens to have been considered by your lordships' Committee. The conclusion of the Committee is stated in the Third Report, page 201, a conclusion the more valuable, because it is a conclusion respecting the case itself. Your lordships have stated the proposition of law as to the very identical circumstance, namely, the attainder of John Dudley, Duke of

<sup>1</sup> See note 1, p. 80.

<sup>2</sup> See note, pp. 93, 94, where it is contended that the Beaumont case justifies the immediately opposite inference.

Northumberland; and in p. 201, after having detailed it with great accuracy, which is the character of the whole of this Report, your lordships say, 'this attainder could not affect the dignity of Baron de l'Isle, as that dignity was never vested in John Dudley<sup>1</sup>.' Here we have the authority of your lordships' Committee upon a statement of all the circumstances of the case now at your bar, a conclusion expressed without the least doubt, and therefore I conceive that that point, though it was a point perfectly right for the late Attorney-General to make, must be taken to have been decided with us, consistently with your lordships' Report; therefore it appears to me, as we have proved our pedigree beyond the shadow of doubt, so we have proved the fact that the claimant is the heir-general of Margaret, who was the eldest daughter of Elizabeth, the wife of the Earl of Warwick, and who was the heiress at law of Warine de l'Isle; and that upon the whole we have made out such a case as would call upon your lordships' House to report for the present claimant.

*Lord Redesdale.*—You do not claim the barony of Tyes<sup>2</sup>?

*Mr. Shadwell.*—If your lordships should encourage him by giving him this peerage, he may claim that.

*Lord Redesdale.*—You have represented Alice as having married Warine de l'Isle, who died in the 6th of Richard the Second—she happened to be his grandmother<sup>3</sup>.

*Mr. Shadwell.*—We were led into that by what is stated in Dugdale<sup>4</sup>. The Attorney-General, represents, that we have no evidence of the other pedigrees of the collateral and other co-heirs. Of course we have not. Supposing

<sup>1</sup> See note, p. 95, where it is submitted that the passage in the *Report of the Lords' Committee* has not the meaning which Mr. Shadwell attributes to it.

<sup>2</sup> See note, 2, p. 1, where the connection between the families of De l'Isle and Tyes is pointed out, and where it is suggested that Gerard de l'Isle was summoned to parliament in right of his mother, the sole heiress of the barony of Tyes.

<sup>3</sup> See note 2, p. 26.

<sup>4</sup> Mr. Shadwell is wrong in attributing the error to Sir William Dugdale, for that eminent writer has stated the fact correctly.

that certain persons answered the description of co-heirs we served notices upon them; but it was never imposed as a duty upon the claimant, that he should ransack the pedigrees of all mankind to find out what their situation was. We have given evidence of our own pedigree, and shown other persons to be co-heirs; that we think is quite sufficient.

*Mr. Attorney-General.*—With respect to this point it is said, that this barony has been in abeyance a long period of time, and an argument is founded upon that to show, that there was no person who could claim. If an argument is built upon that circumstance, it must be shown that the barony was in abeyance, and that can only be done by proving the existence of other branches.

*Lord Redesdale.*—They ought also to show what became of Eleanor and Elizabeth, who were two of the daughters of Elizabeth by Richard Beauchamp, the Earl of Warwick, and are also co-heirs: upon the descendants of those ladies there has been no notice. I see there are thirteen of them; and there is another thing I wish you to attend to—when you speak of the title being “*De Insula*,” have you fixed the period when the titles were considered as so mixed? because you will find in many cases where the ancestor was summoned by his name, and he left a daughter married, and her husband or her son was summoned, originally, the summons was by the name of the person so summoned, without any addition; and, I believe, that till about the reign of Henry the Sixth, you will find no such addition: for instance, one of the Talbots married the heiress of Furnival, and they were summoned by the title of Furnival<sup>1</sup>; and I believe you

<sup>1</sup> The instance alluded to proves that such was the custom as early as the reign of Henry the Fourth. John Talbot, second son of Richard Lord Talbot, having married Maud, eldest daughter and co-heir of Thomas Nevill, (who was summoned to parliament as “*Thomas Nevill de Halamshire*,”) by his wife Joan, daughter and sole heiress of William Lord Furnival, who died 7 Ric. II. 1383, was summoned to parliament as “*John Talbot Lord Furnival*,” in the 11th Hen. IV.: the



will find it was a practice that grew up in the reign of Henry the Sixth, and did not exist before.

*Mr. Shadwell.*—In this case the only evidence of summons we have, is evidence of summons by the same title to the parties “De Insula.”

*Lord Redesdale.*—No, De l’Isle.

*Mr. Shadwell.*—The summonses were all in the time of Edward the Third and Richard the Second, and it is “De Insula” in every one of them; and since that time the title has been in abeyance.

*Mr. Attorney-General.* — I have not yet received the evidence on the other side; and I should wish to have some inquiries made as to the material facts: and as it appears to me that your lordships cannot come to a decision upon it, it being a case of great magnitude, this session, I should hope you will allow me time for that purpose. The claimant has had two years to make it out; and the report was made by my predecessor.

*Lord Redesdale.*—It appears to me the Attorney-General ought, in cases of this kind, to have more assistance than he has. The claimant has all the time he thinks necessary to make searches and collect evidence in support of his claim: the Attorney-General is called upon to answer that evidence, and he has no assistant for that purpose; no established assistant. It strikes me that the House ought to consider that subject, whether the Attorney General ought not to be directed to name a proper person to be his assistant for that purpose<sup>1</sup>.

*Mr. Attorney-General.*—I have had no opportunity of

said Thomas Nevill is also described as “Thomas Sire de Furnyvall” on the Rolls of Parliament, in the 2nd of Hen. IV. In the 8th Hen. V. James Tuchet was summoned as “James de Audley.” In the 5th Hen. IV. John Nevill was summoned as “John Lord Latimer;” and other early instances might be cited.

<sup>1</sup> An order of the House on this subject was made in 1808.

investigating the records in the Tower, either opposing the subject or throwing light upon it. If your lordships would authorize me to give instruction to the Solicitor of the Treasury to make such inquiry as may be necessary, I should hope early in the next session we should be able to bring it, with all the facts, before the House.

*Lord Redesdale.*—My idea is, that the Solicitor of the Treasury is a very bad person for that purpose; he has so many things to do; I do not think he can apply all his diligence to the subject. In the case of a disputed peerage, a person, who was not the Solicitor of the Treasury, was appointed; and certainly without the assistance of that person, the evidence could never have been produced that was produced in that case—I mean the case of the Berkeley Peerage. I think the Attorney-General ought to be at liberty to name such persons as he may think fit. In one case it may be necessary to employ a person of one description, and in another, another.

*Mr. Hart.*—I have no objection to any delay the case might require; but it is right your lordships should be informed, that this case, in point of pedigree, was before my learned friend's predecessor, as Attorney-General, for a year and a half—that he was repeatedly attended by counsel, and had every assistance, and perfectly satisfied himself upon the point of pedigree. I give that as a reason why this claim has been so long suspended; but it is no reason, certainly why the present Attorney-General should not receive that assistance.

*Lord Redesdale.*—You attended the Attorney-General then quite in a different character, not as your opponent but as your judge.

*Mr. Attorney-General.*—Though he does not throw any doubt upon the pedigree, he raises most important questions as to the charter of Henry VI., with respect to whether,

under the circumstances of this case, the evidence of summons and the evidence of sitting is sufficient to create a barony in fee; and also with respect to the operation of the attainder of the Duke of Northumberland<sup>1</sup>: those are all questions of grave consideration, and as to a part of them it may be most material to make inquiry as to the early history of the family.

*Lord Redesdale.*—It is the opinion of this Committee, that His Majesty's Attorney-General should be instructed to employ the Solicitor of the Treasury, or such person or persons as he may think fit, to collect evidence on behalf of the Crown upon the subject of this claim. It is a little important also for the Attorney-General to look into this subject, that is, what has been in various cases considered the effect of the surrender of titles; in what instances these surrenders have been made; and what have been the consequences; and how far impugning the consequences of those surrenders affects the titles under which members of this House claim; and also to consider with respect to the alienation of a dignity, because if the decision, in the reign of Henry VI., as to the title of Earl of Arundel, was a right decision, the House decided a dignity was capable of alienation, and the present title is claimed under an alienation<sup>2</sup>.

Adjourned.

<sup>1</sup> It is remarkable that the Attorney-General did not once allude to the attainder, in his forcible and very able speech.

<sup>2</sup> The barony claimed by the petitioner was certainly not claimed under any alienation, but wholly independent of either of the charters referred to, which charters did not, it is confidently presumed, in any way affect the dignity created by the writ of summons to, and sitting in parliament of, Warine de l'Isle.

*Thursday, 13th April, 1826.*

*Mr. Attorney-General.*—When I had the honour of attending your lordships during the last session of parliament, on the subject of this claim, you desired that I would direct inquiries to be made for the purpose of ascertaining whether any further information could be obtained, or any further documents brought to light, for the purpose of elucidating this subject. In pursuance of the directions which I so received, I have directed inquiries to be made, and I shall have an opportunity, in the course of the observations which I shall have to make, of pointing out the additional information which has been obtained with respect to the claim now urged on the part of the petitioner. The material facts of this case may be stated in a very few words; and before I address any observations upon the argument which has been urged, I will very shortly call to your lordships' recollection what those facts are. It appears that in the 31st year of the reign of Edward the III., Gerard de l'Isle was summoned to parliament by writ, but there is no evidence to show that Gerard de l'Isle ever sat in parliament under that writ<sup>1</sup>: it appears that he lived three years after that summons, and there is no evidence to show that he was ever again summoned<sup>2</sup>.

Gerard de l'Isle left a son Warine de l'Isle, who was sum-

<sup>1</sup> It is shown in page 3, that it is unlikely that Gerard de l'Isle ever sat in Parliament, after the issue of the writ of the 31st Edw. III.; but there are strong grounds for believing that he did so in the 28th Edw. III. See note 4. p. 3.

<sup>2</sup> It is material to remember that Gerard de l'Isle, with several prelates, earls, and thirty other barons, were summoned to a Great Council in the 32nd Edw. III.; and that only two writs to parliament were issued, between the 31st and 34th Edw. III. when he died, namely, the writ tested 10th October, 33rd Edw. III., 1359, at which time he was out of the kingdom, in which writ the names of many persons who were neither peers nor judges occur; and the writ tested 3rd April, 34 Edw. III. 1360, but which parliament does not appear to have met.—See page 3.

moned to parliament not immediately upon the death of his father but nine years afterwards, in the 43rd year of the reign of Edward III. He was afterwards summoned to parliament during the successive years of the reign of that monarch, I think in the whole six times. After the death of Edward III. he was again summoned to parliament in the reign of his successor, Richard II., eight several times; so that he was in the whole summoned to parliament fourteen distinct times.

Warine de l'Isle, upon his death, left a daughter Margaret, the wife of Thomas Lord Berkeley, who was his heir; she left a daughter Elizabeth, the wife of Richard Beauchamp, Earl of Warwick, who was her heir; Elizabeth left three daughters, Margaret, Eleanor, and Elizabeth, co-heirs to Elizabeth, co-heirs to Warine de l'Isle. It is said by the claimant's counsel, that Warine de l'Isle, in consequence of the summons to parliament, and, as they state, of a sitting under that summons, acquired a barony in fee, and that that barony fell into abeyance in consequence of Elizabeth, Countess of Warwick, having died, leaving three daughters. The petitioner claims to be descended as heir of Margaret, the eldest daughter, who was the wife of John Talbot, Earl of Shrewsbury. Having stated this, I have really stated almost all the material facts of the case, in order to raise the argument which has been urged on the other side, and in order to introduce these observations which I shall take the liberty of offering upon that argument.

It is said, that by the summons and sitting of Warine de l'Isle, a barony in fee was acquired to him and his descendants; that that barony fell into abeyance in the manner I have described, and that the claimant, who is the heir of the eldest daughter, applies therefore to the grace and favour of the Crown, to have that barony revived in his person. For the purpose of establishing this case, it is

necessary that your lordships should be satisfied, not only that Warine de l'Isle was summoned to parliament, but that he also sat in parliament. With respect to the first part of the case, it is established by very clear and satisfactory evidence that he was summoned to parliament six several times in the reign of Edward III., and eight several times in the reign of his immediate successor; but there is no evidence that can satisfy you that Warine de l'Isle ever sat under those summonses. In order to establish a sitting, it has been over and over again decided, that the sitting must be evidenced by the Rolls of Parliament. In a case of this description, where there is so much obscurity, your lordships have repeatedly said, 'we cannot proceed upon conjectures; we cannot proceed upon presumptions; we must have the Roll of Parliament, and we must see, in the proceedings of parliament itself, the name of the individual who is stated to have so sat.' I know of no case that has controverted that proposition; there is no case where the House has proceeded upon presumption for the purpose of establishing the right to sit in parliament, unless where the sitting has been previously established, and has by presumption, from what has so taken place in parliament, (which is still proved by the Rolls of Parliament,) proceeded to give the right of a baron of the realm. No case has been cited for the purpose of establishing an exception to the rule, that it is absolutely necessary to produce the Rolls of Parliament or the Journals, to show that the individual so summoned actually took his place, and sat as a peer of parliament.

But the claimant's counsel say upon this occasion, they have produced a document of that nature. They meet the challenge thrown out, and say, we have a Roll of Parliament, which sufficiently evidences that Warine de l'Isle sat in parliament, that he sat in parliament in the 5th year of the

reign of Richard the Second. Now I think when your lordships look at that document, you will be of opinion it does not contain sufficient evidence of the fact that Warine de l'Isle did sit in parliament in the 5th year of the reign of Richard the Second. That document is in substance what I am about to cite.

[The Attorney-General then read the entry on the Rolls of the 5th of Richard the Second, which has been before noticed<sup>1</sup>, and proceeded to say,]

This is nothing more than an adjournment, because all the parties did not attend, to the following day. It appears that a meeting took place upon that following day; but can it be pretended that this document can be made use of for the purpose of establishing the fact, for that is the object for which it is presented to your lordships, that every individual, to whom summonses were addressed, did assemble upon the day to which parliament had been adjourned?

[The Attorney-General then read the extracts from the Rolls of Parliament which occur in page 52, ante, and thus proceeded—]

I think it is straining the thing very far indeed, to suppose that every individual to whom a summons had been addressed attended at that meeting; and from the nature of the adjournment, (which adjournment took place because a very insufficient number of peers appeared on the preceding day,) it cannot be used for the purpose of showing that every individual who was summoned attended, and that, amongst others, Warine de l'Isle, who had a summons to parliament, himself personally attended.

Mr. Shadwell says it is not very probable that every individual there attended, but he says I have a right to make use of this as a document not to be controverted; for

<sup>1</sup> See pp. 52. 74—75.

it says those persons so summoned did attend. I am entitled to argue from the record, however improbable the fact may be, that every one did attend. But I apprehend your lordships will not think that my learned friend is entitled so to argue. It is impossible to take this upon the very letter of it, that all those who were returned did attend; and unless the House can be satisfied that if any individual or any number of individuals had not attended, that would have been stated as a matter of fact upon the record itself, I am persuaded you will not think they are justified in the inference they attempt to draw from this instrument.

There is a remarkable fact occurring in that very year, which satisfies my mind at least that the attendance was not so full as my learned friends suppose. Did your lordships ever hear of a full attendance, without exception, of every individual returned to this House and to the other House? But there is this material and important circumstance:—a law passed in that very session of parliament which satisfies my mind that the assemblage was not so full upon that occasion as is supposed; for this most extraordinary circumstance occurred, most inconsistent with that which is for the purpose of this case assumed, namely, that every individual member summoned to this House actually attended in pursuance of that summons; and that every individual returned to the other House also attended, in pursuance of that return. If the fact had been so, I should have thought the legislature would have been quite satisfied with that circumstance, and would not have thought it necessary to interpose to pass any law whatever upon the subject. It is in times when circumstances require new laws, that new laws are passed. If the attendance had been perfectly full, it is scarcely to be supposed that at that period, when no complaint existed of the attendance of the members of this House, that period would have been selected for the purpose



of passing a law upon the subject of the attendance of members of this House; and yet it is a remarkable fact, that in that very year, the fifth year of the reign of Richard the Second, we find a law passed for the purpose of enforcing attendance and rendering it obligatory; thus showing that at that period the failure of attendance was a matter of such serious complaint as to require the interposition of the legislature for the purpose of providing a remedy. It is impossible, therefore, to suppose that every individual had attended at this period; for, a few weeks afterwards, an act of parliament was passed for the purpose of compelling attendance in future. The act to which I refer for this purpose was passed in the 5th year of Richard the Second. [The Attorney-General then read the statute in question<sup>1</sup>.] The state of the country was such, and the attendance in parliament was such, that it became necessary for the legislature to interpose to enforce a more regular attendance in future, which is an argument to show that the construction put is not a proper construction, and that we are not to assume, from a fact of this nature, that all the persons summoned to parliament assembled in virtue of the summons they received.

If the conclusion drawn from this instrument is wrong, there is no evidence whatever, nor has any been offered, to show, by the Rolls of Parliament and the proceedings of this House, that Warine de l'Isle ever did sit in parliament under these summonses; but then my learned friends say, we shall supply this by another species of argument, by an inference;—an inference which has never been drawn by this House on similar occasions, and which, if drawn, will be attended with most material and important consequences. Because, by referring to the different summonses, we find

<sup>1</sup> See note, p. 63.

several individuals who have been summoned once, twice, three and four times, and never afterwards, nor were their descendants summoned; if, then, you are to assume, merely from the circumstance of a succession of summonses, that the persons sat in parliament, it will be attended with consequences of a very serious nature indeed.

The counsel for the claimant say, it is true, perhaps, that we have no conclusive evidence that he sat in parliament; but if he was summoned several times during the reign of Edward the Third, and during the reign of his successor, it is fair to infer that he would not have been summoned, unless he had actually taken his seat; but with respect to the effect of those summonses, what I took the liberty of submitting in the outset, is this—that on a subject so obscure as that we are now tracing, and involved in so many intanglements, your lordships will not proceed, and never have proceeded upon presumptions of this nature. You have required, as proof of the sitting, the production of the Roll of Parliament, for the purpose of establishing that fact; and I say that my learned friends are not entitled to make use of this argument for the purpose of showing that Warine de l'Isle ever did sit in parliament. It is an argument which I have heard pressed before, but this House has never decided in favour of any claim on such an argument.

I have said there must be evidence of a sitting in addition to the evidence of a summons, and we must have that evidenced by the Rolls of Parliament themselves. I know reference has been made to the language of the ' Report of the Committee of this House, appointed for the purpose of inquiring into the Dignity of a Peer of the Realm;' but I think the construction put upon that expression goes much beyond what is intended by that Report: and as I am desirous that every part of this case should be laid before your lordships, having no anxiety but that it should be com-

pletely understood, I shall again call attention to the passage which my learned friends have read, in order that it may be seen whether the construction they have put upon this passage is consistent with the intentions of the persons by whom this Report is framed. In the Report it is stated—‘ it is evident from the language thus attributed to the Lord Chief Justice Bramstone, that he conceived, if his words are truly reported, that a barony, as then existing, must have commenced by some mode of creation, ennobling the person so made baron, and that that creation must be proved by some record of the fact of creation. That might be by a patent of creation, or by a writ of summons to parliament, issuing by the grace or favour of the Crown, and sitting thereupon in parliament, which has now been deemed to create an hereditary right; or by a succession of writs, from which a prior creation, either by patent or by writ, might be inferred.’ Now it is said that the doctrine contended for is supported by the Report to which I have directed your lordships’ attention: that there has been a succession of writs issued to Warine de l’Isle, and from this succession of writs issued to him, it is inferred that he must have sat in parliament under some of those writs; and that that is supported by the language of the Report, in which it is stated, that by a succession of writs a prior creation, either by patent or by writ, may be inferred: but I apprehend this Report means nothing more than that a peerage may be created by patent or by writ, and by sitting under it, which is evidence of some species of creation, or may in itself perhaps be a creation; or where there is a succession of writs, and a sitting under that succession of writs, it is not each writ, which is in itself accompanied with a sitting, which is a creation; but where there is this succession of writs, you must refer that back as evidence of a prior creation. I apprehend the noble lords, who prepared this Report, meant nothing

more than that which I have stated ; but if they did mean any thing more, all I can say is, that it is not supported by any decision of this House ; that your lordships have never, in any instance, decided, that the mere production of any succession of writs addressed to the same individual should be considered satisfactory evidence of a sitting, so as to create a barony in fee.

But my learned friends say, having offered this evidence, we have exhibited a case much stronger than that referred to, namely, the Botetourt case, commencing by writs in the reign of Edward the First; they liken the decision in this to the decision of the House in that case, and there is no other case to which they can refer more analogous to the present, than the decision of the House on that claim. I wish to call attention to the circumstances of that case, for the purpose of showing how entirely dissimilar they are from the present, and how strong that case was ; how proper and just that decision was ; and how impossible it was that this House could have pronounced any other judgment upon the Botetourt claim<sup>1</sup>. In that case, John, who was the ancestor of Lord Botetourt, had, in the reign of Edward the First and Edward the Second, been summoned seventeen successive times to parliament. Was there any evidence of his having sat under those summonses? There was evidence of his having sat on three distinct and remarkable occasions. On one occasion deputies had been sent from Scotland to this country for the purpose of treating on affairs in

<sup>1</sup> These observations are exceedingly important, as a record of the Attorney-General's opinion of the effect of writs of summons and sittings in parliament under them, in the period when a learned lord is disposed to consider that writs and sittings did not create an hereditary barony. The Botetourt case establishes a valuable precedent ; and as the decision to which the House came on the occasion was strictly consistent with the practice of centuries, it may be presumed that the law laid down by Lord Coke on the subject of baronies by writ, confirmed, as it has been, by innumerable decisions of the House, will remain unaltered.

which Scotland was very greatly interested. On those deputies arriving in this country, certain prelates and lords, members of this House, were appointed for the purpose of conferring with them, and for the purpose of treating with them in parliament on the objects of their mission. One of the individuals, so named for the purpose of carrying on that treaty and negociation, was John de Botetourt, who had been summoned to that parliament; that was satisfactory evidence, therefore, for the purpose of proving he had taken his seat under that summons<sup>1</sup>. There was proof of another instance of sitting in the reign of Edward the First: a bishop of Palestine, the Bishop of Biblos, had, through the intervention of the pope, applied for the priory of Goldingham in Scotland. This question was referred by the king to the House of Lords; and a number of persons were appointed as a Committee of this House for the purpose of taking that petition into consideration: they did take it into consideration; and they reported to the Crown upon the subject; and it appears from the Rolls of Parliament, that one of the individuals was John de Botetourt, who had been summoned to parliament: so that there were two instances in that reign in which he is proved to have acted as a peer of parliament<sup>2</sup>. Again, in the subsequent reign of Edward II. a com-

<sup>1</sup> *Rot. Parl.* vol. i. p. 267, from the *Clause Rolls*, 33 Edw. I. m. 13, verso. This record was the only proof of sitting that was tendered, to show, that John de Botetourt, the first baron, sat in parliament; but it appears from the Committee Book, that after some discussion the Committee resolved, that the record was not evidence of a sitting; the objections being, that it was not written upon the Clause Roll, but affixed or tacked to it; that it was written in a different hand; and that the parchment was not the same size as the Roll.

<sup>2</sup> *Rot. Parl.* vol. i. p. 179. "Placita in Parlamento Domini Regis apud Westmonasterium die Dominica post Festum Sancti Mathei Apostoli, anno Regni Edwardi filii Regis Henrici tricesimo tertio," i. e. 28 February, 1305. The proceeding referred to took place on the 5th of April following. It is evident, from the *Committee Books*, that that record was not produced in the claim to the barony of Botetourt. John de Botetourt does not appear to have received an earlier writ of summons than one tested at Fyndon, 19 June, 33 Edw. I. 1305, commanding him

mission was appointed, by authority of the king, for the purpose of making regulations with respect to his household, and peers, members of this House, were appointed for that purpose; among the individuals appointed for that purpose, members of this House, was John de Botetourt, who was summoned to that parliament<sup>1</sup>. Nothing can therefore be more clear, than that he had been summoned seventeen successive times, and that there was evidence among the scanty materials of that age, of his having, on three distinct occasions, sat in this House. But there was another fact which was most material and important in the consideration of a case of this nature, where we are talking of an hereditary dignity; it was not confined to John de Botetourt: he had a son named Thomas, who died during his lifetime; Thomas left a son John; and it is most material to inquire whether a writ of summons was afterwards directed to John, the grandson. It will be found, that in the reign of Edward III., the grandson was summoned to parliament, not on one or two occasions only, but on eighteen several and distinct

to attend a parliament at Westminster on the Feast of the Assumption, 15th August next following.—*Parliamentary Writs*. But he undoubtedly was present in the parliament at Lincoln in February, 29 Edw. I. 1301, as he was a party to the Letter to the Pontiff from the Baronage of England, on his Holiness's claim to Scotland, in which he is styled "Johannes Bottetourt Dominus de Mendlesham;" and his seal is still attached to that instrument.

<sup>1</sup> *Rot. Parl.* vol. i. p. 443, from the *Claus Rolls*, 3rd Edw. II. m. 8, dorso. This document was not adduced in the Botetourt case, and it is not certain that it would be received by a Committee of Privileges as a proof of sitting, though there are strong grounds for considering that it was a proceeding in parliament. The *Rolls of Parliament* for that year are not preserved, but all the parties to the document cited by the Attorney-General, which is dated at London, 17th March, 1309-10, excepting two, were summoned as peers, by writs tested 12th December, 3rd Edw. II., 1309, to attend a parliament at Westminster, on Sunday after the Feast of the Purification next following, i. e. 8th February, 1309-10; and those two persons were summoned by the previous writ, tested 26th October, to meet at York on that day, but which was changed for Westminster by the writ of the 12th December. *Appendix No. 1. to the First Report on the Dignity of a Peer of the Realm*, pp. 196—200.

occasions. Was there any evidence of John de Botetourt, the grandson, having taken his seat in parliament? There was also distinct and clear evidence of that fact, because on one occasion, exhibited by the Rolls of Parliament, John de Botetourt, in his place in parliament, became surety for William Lord Latimer, accused before this House of some misdemeanor<sup>1</sup>; so that upon that occasion, there was evidence of the grandfather having been summoned on seventeen occasions, and of the grandson having been summoned on eighteen occasions. There was evidence of the grandfather having taken his seat, and acted, upon three distinct occasions, and of the grandson having taken his seat on one occasion; what analogy or resemblance therefore is there between that case and the present, where the only record adduced by my learned friends to satisfy your lordships of the sitting of Warine de l'Isle, is that entry respecting the adjournment to which I have referred, and the inference they attempt to draw from the circumstance of Warine de l'Isle having been summoned to parliament in the manner I have stated?

With respect to this part of the case, therefore, I pass it over and proceed to another document, on which very great reliance has been placed. The document to which I refer, is a patent of creation granted by Henry VIth., in the 22nd year of his reign, and to which I wish particularly to call attention. It is said on the other side, that if it be doubtful whether Warine de l'Isle sat in parliament from reference to the entry which they have cited, that if it be doubtful whether he sat in parliament from

<sup>1</sup> Anno 50th Edw. III. *Rot. Parl.* vol. ii. p. 326. It appears, from the Minute Book of the Committee, in the claim to the Barony of Botetourt, that in consequence of the objections which were taken to the proof of sitting, of the 38rd Edward I. [see note 1, p. 154] the counsel for the petitioner contented themselves with producing this record for that purpose, and which was the *only* proof of sitting received. See also a subsequent page.

the circumstance of his having been summoned so repeatedly to this House, the fact is established beyond the possibility of doubt by the charter to which I have referred. That charter states facts which are most material : it states in the first place, that Warine de l'Isle was seised of the manor of Kingston l'Isle, in the county of Berks ; it then traces the descent of this manor to Margaret, Eleanor, and Elizabeth ; it then states that Margaret took this manor by virtue of a partition made with her two sisters, as her share of the property which descended from Warine de l'Isle ; and then it goes on to state, that Warine de l'Isle and all his predecessors, from time whereof the memory of man is not to the contrary, had, by virtue of this manor, sat in this House as barons of the realm and as peers of parliament ; it then states, that Margaret and her husband had conveyed this manor to her son John, and therefore the king wills and grants, that John and his heirs and assigns, lords of the manor of Kingston l'Isle, shall be barons of the realm and peers of parliament, and have the same rank, place, and dignity in this House, which Warine de l'Isle formerly enjoyed by virtue of the same possessions : and then it says, that, lest, from the lapse of time and the obscurity of the descent, the history of this title should be lost, for the purpose of obviating any danger of that description, the king wills, creates, and grants him and his heirs, lords of the manor of Kingston l'Isle, barons of the realm, to sit in this House, with the same rank and dignity and the same precedence that Warine de l'Isle held by virtue of the same property. This is the substance of the charter of the 22nd Henry VI., and which has been used for the purpose of showing that Warine de l'Isle sat in parliament. In the first place, I doubt whether it can be used for that purpose at all. I say, that a sitting in parliament can be proved only by a proceeding in parliament ; and I think a very great stride is



made when a patent of this description is used for the purpose of proving, that at this antecedent period Warine de l'Isle sat in parliament; but I wave this: I will assume that it may be made use of as evidence, for the purpose of proving that Warine de l'Isle did sit in parliament. If it be produced for that purpose, we must take the whole instrument together. In what right, and by what title, and in what respect did he sit in parliament? Was it in virtue of a general summons granting the right to his heirs, male and female?—no such thing; according to this instrument, he sat in parliament under another title, by another claim. He and his ancestors, from time immemorial, sat in parliament, not by virtue of a general writ, but by virtue of their possession of the manor of Kingston l'Isle. If, therefore, this document is made use of for the purpose of proving the sitting, it is actually destructive of the claimant's case; for if it proves a sitting, it proves a matter inconsistent with their claim; they are not in possession of the manor of Kingston l'Isle, nor have they, or their predecessors for many generations, been in possession of it. This patent, therefore, if it is to be made use of as evidence, proves a sitting in a particular character, and in a particular right and title; and if it is used to prove a sitting, the whole of it must be taken together, and the consequence of doing that would be a right inconsistent with the claim presented on the part of the petitioner.

I apprehend I am right in pressing the argument in this way, but what do my learned friends say? They say that some of the averments in this instrument are false; that Warine de l'Isle never did sit in parliament as lord of the manor of Kingston l'Isle; that the statement in the charter is false. They undertake themselves to prove it false, and they offer evidence for that purpose; evidence which is satisfactory, and which was convincing. Then what becomes of the document and the argument founded upon it? They make use of a very

singular argument, an argument I never yet heard before any tribunal—‘ here is an instrument we show to be false, a grant from the Crown proceeding upon averments which we avow to be false, and yet we make use of it as evidence for the purpose of proving the fact stated in that instrument.’ I would ask if the sitting is stated in that instrument to be in a certain right, and we prove that he cannot by possibility have taken his seat in that right, how can they turn round and say, ‘ it is true he did not sit in that right, but the instrument is evidence that he sat in some other right, which gives us a title to the estate we are now claiming?’ I apprehend that your lordships will not think such an argument can be urged, or that an instrument, which those persons who produce it admit to be false in its most material parts, indeed in the very foundation of the grant contained in that instrument, can be made use of, for the purpose of proving any fact contained in the body of that instrument.

Evidence was offered for the purpose of proving, that Warine de l’Isle could not have sat in consequence of the tenure of the manor of Kingston l’Isle. I have directed an inquiry to be made with respect to that point, in the first instance, and I find in confirmation, and by a much more direct species of evidence than any before offered, that it is quite impossible that Warine de l’Isle could have sat in this House, from time immemorial, by virtue of the possession of Kingston l’Isle. In the 54th of Henry the Third, considerably within the time of legal memory, the family of Warine de l’Isle were not the proprietors of this manor. It is stated on the face of this instrument that Warine de l’Isle and all his ancestors had from time immemorial, by virtue of that estate, sat as barons in the House. We have investigated the title, and find that in the 54th of Henry the Third, long within the time of legal memory, this estate came to that family. I have the fine from Alice de

Insula, who was the owner of the manor of Kingston, and by that fine this manor was conveyed in that year to Gerard de Insula. It was conveyed by Alice de Insula to him and to the heirs of his body, paying a rent to Alice during her life of £160 a-year, and for all services the service of one knight's fee; this was in the 54th of Henry the Third. It is quite clear and obvious, therefore, that Warine de l'Isle and all his ancestors from time immemorial were not the owners of this manor; that they had not this prescriptive right to a seat in this House; and that the statement of the patent in this respect is entirely destitute of foundation. It appears by this fine that the property was, in the first instance, conveyed to Gerard de Insula. He had a son named Warine de Insula, to whom that portion descended; Warine de Insula had a son of the name of Gerard de Insula, to whom it descended; and he had a son named Warine, who is the person in question; so that it seems that the great grandfather of that Warine was the first taker of this property, and that long within the time of legal memory. It is quite clear, therefore, that the statement in this patent is unfounded. But this is a very small part of the objection I have to make to this patent. I shall prove the subsequent part to be also unfounded; for it is stated by the king in this grant that Margaret and John Talbot, Earl and Countess of Shrewsbury, who had inherited the manor of Kingston l'Isle, had conveyed it to their son John Talbot, and that John being in possession of this manor, he, therefore, as possessor of it, had a title annexed to that estate. The inquisition taken on the death of the said Margaret proves this to be utterly false; for she died in possession of this very property, to which her title is adduced in a manner so apparent in the inquisition, as to put it beyond all doubt. In that inquisition *post mortem*, the history of this manor is traced from Alice to Gerard, from Gerard to Warine,

from Warine to his son Gerard, from that Gerard to the second Warine, then to Margaret, then to Elizabeth, then to the three daughters, Margaret, Eleanor, and Elizabeth; and it is stated that she died in possession, and that her grandson Thomas was at that time her heir, John, her eldest son, being at that time dead; and to show that this certainly was in the possession of Margaret, it appears that John Talbot, who was her husband, actually granted the office of park-keeper at a certain rent in the reign of Edward the Third, and afterwards in the reign of Richard the Second, and appointed a steward of the manor: and all those deeds are stated by the jury to have been produced before them. So that it is proved, that the statement and deduction of this title are unfounded, and that the supposed grant by Margaret to John Talbot her son had no foundation in reality.

It is said, 'if you prove this instrument utterly unfounded, and that the averments are false, still we make use of it as evidence for the purpose of proving that Warine de l'Isle sat in parliament; he did not sit in parliament by virtue of the possession of this manor, but he sat by virtue of some other title.' I have already stated, that they cannot, if an instrument fails in almost every part of it, make any use of it for the purpose of establishing any fact whatever. But I would put it in another way; in what situation did John Talbot himself stand? because the present claimant claims as the heir of John Talbot, and claiming as his heir, he must stand in the same situation, and be governed by the same rules by which a claim made by John Talbot would have been governed. Let me suppose for a moment, that Eleanor and Elizabeth had died in the lifetime of John Talbot, and there would have been an end to the abeyance; John Talbot would have been entitled to the peerage in fee, provided Warine de l'Isle had had a peerage in fee. I ask,

whether, under such circumstances, John Talbot, who had accepted this grant from the Crown, could have set up such a claim; I apprehend it is perfectly clear that he could not; and that having accepted the Barony of de l'Isle from the Crown, under the patent to which I have referred, containing such averments as I have stated, he would have been concluded by those averments, and that it would not have been competent to him to have controverted that by any species of evidence whatever<sup>1</sup>.

This is the doctrine which has been uniformly and constantly acted upon in this House, that where a party accepts under a deed he is estopped from averring any thing against the contents of that deed and is concluded by it. If it is necessary for me to refer to authorities for the purpose of establishing that position, I will refer to a very short statement in Roll's Abridgment, page 864, which is decisive of the point. 'If the king by his letters patent grants lands to B., claiming nothing in the freehold, B. cannot afterwards say against the king that he was enfeoffed by A. In that case B., who had taken property from the king by letters patent, in consequence of some circumstances which had occurred, felt an interest to say I was enfeoffed previously by somebody else, and it was my title independent of the Crown. No; the answer is, you are concluded, by having accepted those letters patent from the Crown, from insisting upon that. You cannot afterwards say against the king that you were enfeoffed by another person, by A.' There are several other authorities, to which I will refer your lordships, which are to the same effect. If a man take a lease by indenture of his own lands, there is no question whatever, that the man is in possession of lands by an indefeasible title. I will suppose, with respect to his title, that he has a freehold; if he takes a lease by indenture of

<sup>1</sup> See note, p. 84.

his own lands, the lease, which is so made by indenture, of his own land (though he has an absolute freehold) actually, in point of law, binds him; for he is concluded from saying any thing afterwards against his own act, accompanied by so solemn an instrument as a deed under seal. Again; if a tenant prays aid of the king, affirming that the reversion is in the king, when the king has no reversion of it in fact, there the king has gained reversion thereof by conclusion, though the tenant had the fee-simple before. This is in Brook, title *Estoppel*, Placitum, 203. I mention these as instances of what is the principle of the law in this respect; that where a party takes an estate by an instrument, which instrument states particular facts, he, by his acceptance of the estate under that instrument, is afterwards concluded from controverting those facts.

Then, to apply that principle; supposing that the abeyance had terminated in the time of John Talbot, he having accepted the barony of De l'Isle under the patent of the 22nd Henry the Sixth, would it have been competent for him to have said, Warine de l'Isle did not sit as lord of the manor of Kingston l'Isle; he did not sit by virtue of that possession; he sat in parliament by virtue of a general writ that gave an estate in fee to him and his descendants? I apprehend it would not have been competent for him so to have contended, and that, having accepted the title under the charter of the 22nd Henry the Sixth, he would have been bound by that charter, and could not have taken under any grant to his ancestor, Warine de l'Isle.

But what is the next step in this argument? If John Talbot would have been affected by this, will it affect the present claimant? I apprehend it affects him equally with John Talbot. The claimant claims through John Talbot, as his heir; and it is perfectly clear, therefore, that if he would have been bound by his acceptance of that patent,

that he would have been bound by all the averments contained in that patent; it equally binds those who claim through him as his heirs. I apprehend therefore, upon this part of the case, that the claimant not only cannot avail himself of any statements which are made in the patent of Henry the Sixth, for the purpose of proving that Warine de l'Isle sat in parliament; but that having made use of this instrument for the purpose of supporting their case, they must be bound by the averment contained in it, and that they cannot depart from that and say that his sitting was in any other right. But the counsel for the claimant say that the averments are all false—be it so;—they say that it is impossible he could have sat in virtue of this manor of Kingston l'Isle—I deny that. We find that John Talbot sat by virtue of that possession on false statements, and I should wish to know what reason, therefore, there is why we are to suppose that Warine de l'Isle may not have sat also on a false representation and statement, and why therefore are we to refer the sitting of Warine de l'Isle to a former writ of summons, and not to refer it to some reservation similar to that acted upon in the reign of Henry the Sixth with respect to his descendant, John Talbot?

It is contended on the other side that they have made out not only a case of summons, but of sitting; and the case on our side resolves itself into the Parliament Roll to which I have referred, to the repeated summonses, and then the patent of the 22nd Henry the Sixth, which I have stated to be false in all its material allegations, and which therefore cannot be made use of as evidence for the purpose of proving a sitting at all; but I contend that if it is made use of for the purpose of proving a sitting, it must be made use of for the purpose of proving a sitting with reference to the right contained in the instrument itself, and that it is not competent for those who are claiming through John Talbot

to abandon a part of it and to make use of another part of it.

When commenting on the charter of Henry the Sixth, some stress was laid on a phrase which we find in the patent—that is printed in the evidence in italics at the foot of the patent, “*per auctoritate parliamenti.*” Mr. Hart, in the course of his argument, said that this charter came with very great force, for it was not merely a charter of the Crown, but it must be considered as having the force of an act of parliament; because it was a patent granted by authority of parliament, and being printed in italics in the evidence, it is quite obvious it was so printed with a view to raising that argument; but I conceive that this is entirely a mistake.

About two or three years before this patent was granted, an act of parliament was passed for the purpose of remedying the mischief which was at that time very prevalent. It was usual for persons to apply to the Crown for patents and grants, and in their petitions to pray that those patents and grants might be dated at a day then past, the consequence of which was that when these petitions were complied with and the patents were so granted, according to the statement in the act of parliament, many persons, who had previous titles to farms and offices, were dispossessed by virtue of the patents that were so granted; and for the purpose of remedying this mischief, and in order that it might not be continued in future, an act of parliament in the 18th year of Henry the Sixth, c. i. was passed, reciting the mischief, and providing a remedy; and in that statute it is declared that when the warrant is brought and delivered to the Lord Chancellor, the day upon which it is so delivered shall be entered of record in chancery, and that the patent which is granted in pursuance of that warrant shall not bear date at a day anterior to the time when the warrant shall be delivered. It is



provided by the statute in question, that the day of the delivery of the King's warrant to the Chancellor shall be entered of record in the chancery, and that the Chancellor shall cause letters patent to be made upon the warrants, bearing date upon that day, for the purpose of remedying those evils which had previously existed in consequence of patents having been granted with a former date, by which persons who had obtained a previous grant had been dispossessed of their property. Immediately after the passing of this act, we find, but never before, all patents are subscribed in this way, "*P. bre' de privato sigillo et de data predicta, auctoritate parlamenti,*" obviously with reference to the act of parliament to which I have referred; and I shall call a witness, who is very conversant with these matters, who will prove that this term is never found in any patent previous to this statute, but that it is often introduced into patents subsequent to it; and this statute having been passed only four years before the patent to which the petitioner's counsel refer, I apprehend that this is a sufficient answer to their argument, that this is not to be considered a patent, but an act of parliament, having something of a legislative force, and that they have totally misapprehended the meaning of those words.

With respect to this part of the case, I have made the observation, that there is no distinct evidence of a sitting under these summonses, and the question is, whether your lordships will, from the mere fact of a succession of writs issuing, (six in the reign of Edward the Third and eight in the reign of Richard the Second,) infer, that Warine de l'Isle did sit in this House; and whether if you infer that he did sit in this House, you will not rather be disposed to refer that sitting to some claim arising out of the manor of Kingston l'Isle, though unfounded, than to that general right arising out of the summons, and which it is sup-

posed to confer when the sitting has connected with it a right to a barony in fee. The question, when stripped of the collateral circumstances, is very confined; and all I have been able to do, as the result of the inquiry I was directed to make, has been, to obtain the additional evidence, which I shall submit, as to the nature of the property of Kingston PIsle, and as to the falsehood of the allegation, wherein it is stated that this property was conveyed by Margaret to her son, John Talbot, and that he held it in virtue of his possession of that manor.

I have looked through the pedigree for the purpose of seeing whether it was satisfactorily established. I am satisfied it is made out and established, with one exception, upon which some doubt exists; and it is my duty to state the circumstances connected with that doubt. The point to which I refer is, the marriage of Robert Dudley Earl of Leicester, in the reign of Queen Elizabeth. If he was married to Lady Douglas Howard, and if Sir Robert Dudley was the offspring of that marriage, it will be incumbent upon the other side to prove that the daughters, the fruit of that marriage, left no issue. I do not mean to say, that I can prove that Robert Dudley was married to Lady Douglas Howard; but still it is my duty to state the information I have obtained upon the subject: and if there be any doubts with respect to it, it will be incumbent upon the claimant to remove that doubt, by showing that Katherine, who married Leveson<sup>1</sup>, and another person, died without issue, or that their issue is extinct. Robert Earl of Leicester married, first, the daughter of Sir John Robsart, who died in a mysterious manner, and it has been supposed that he was accessory to her death—that I pass over. He afterwards cohabited, undoubtedly, with Lady Douglas Howard, and he had by her a son, Sir Robert Dudley. He

<sup>1</sup> See p. 50.

denied that he ever was married to that lady, and he afterwards married the widow of the Earl of Essex. Now the statement with respect to the supposed marriage with Lady Douglas Howard is this:—he married her as Lady Douglas Howard, she herself swears, at her house at Esher, in the county of Surrey, in the presence of several witnesses. He desired her to keep the marriage secret, in consequence of the apprehension he entertained of the manner in which the intelligence might be received by Queen Elizabeth. He afterwards endeavoured to persuade her, by large pecuniary promises, to say nothing about the marriage; and he made her, at an early period, take a vow that she would never mention it. The fruit of that connection was Sir Robert Dudley. After the death of Lord Leicester, Sir Robert Dudley was desirous of establishing his legitimacy, and he took steps for that purpose. The plague at that time raging in London, proceedings were instituted in the Ecclesiastical Court at Lichfield for the purpose of perpetuating the memory of the marriage. Sir Robert Dudley was a party to those proceedings, but he had some very powerful opponents; for the widow of Lord Leicester, who had been previously the widow of Lord Essex, was very powerfully connected. Lord Sydney interposed, and the consequence was, that Sir Edward Coke, at that time Attorney-General, instituted a proceeding in the Star Chamber by information against all the parties who were concerned in this proceeding, both against Sir Robert Dudley himself and his mother, and against Sir Thomas Leigh, son, I believe, of Lord Leigh; against Doctor Babington, the judge of the court in which the proceedings were carried on, and others; and they were charged with a conspiracy to establish this marriage, with a view to give him a title to the earldoms of Leicester and Warwick and the estates incident to those titles.

During those proceedings, witnesses were examined for the purpose of establishing the marriage. Lady Douglas Howard herself was examined, and swore positively to the marriage having taken place. She described all the circumstances, and the reason of the concealment; she said she had been pressed to keep it secret by the earnest entreaties of Lord Leicester himself, for the reasons I have stated, and that he had made her take a vow that she would never reveal it; and that after a considerable lapse of time he had requested her, accompanying that request with great pecuniary offers, to renounce the marriage altogether, because he was paying his addresses to the widow of the Earl of Essex. The marriage was also proved by a woman of the name of Magdalen Salisbury, who was present and swore positively to the same facts, and by the evidence of several other witnesses. As I had received directions from your lordships to make inquiries as to the particulars of this case, I caused inquiries to be made at the office of the Privy Council, where those proceedings had been carried on, for the purpose of ascertaining whether those depositions, or the decree itself, were still to be found; and I directed inquiries to be made at the State Paper Office, but I have not been able to discover those depositions. It was stated that those depositions were ordered by the Court to be sealed up, that no person might afterwards have access to them.

In consequence wholly of these proceedings, Sir Robert Dudley left the country, and established himself in the dominions of the Grand Duke of Tuscany. He was a man of extraordinary talents and very popular manners, and great information and science, according to the scale of things in that day, and he became a great favourite with the Grand Duke of Tuscany, who raised him to the rank of a duke. While he was abroad, Prince Henry negotiated with him

for the purchase of Kenilworth ; that treaty was completed ; and King Charles the First afterwards negotiated with his wife for the purchase of her interest in the same property ; Subsequently to this, a grant was made by King Charles (and I invite attention to these facts, because they were thrown out by a noble lord not now in the Committee) to his wife of the title of Duchess Dudley ; which grant, or a copy of it, was directed to be registered in the Heralds Office, and measures were ordered to be taken for carrying it into effect. I have directed the Heralds Office to be searched, where I have obtained a copy of that patent, and I will state very shortly what it contains.

[The Attorney-General then read the patent, which will be noticed in a subsequent page.]

I have also directed further inquiry, understanding that one of these daughters, Lady Frances, who married Sir Gilbert Kniveton, was buried in St. Giles's Church ; there was a monument erected there to her memory, and I have a copy of the inscription on that monument, which I will read.

[The Attorney-General then read that inscription.]

Thus it appears that Sir Robert Dudley is described, generally, as the son of the late Earl of Leicester, which, as far as it goes, is evidence of his being the legitimate son of that nobleman. The claim now made is not a claim of right, but a claim of grace and favour : this barony is in abeyance, and the petition is, that the abeyance shall be terminated in favour of the petitioner, which is a claim of grace and favour. It is material that every information should be afforded of which the circumstances of the case will admit ; and if, on considering all the facts of the case, there be

doubt whether that marriage did really take place, to which I have referred, I conceive, under these circumstances, it is peculiarly incumbent upon those who apply for the exercise of the royal favour to give evidence for the purpose of removing every degree of doubt; and I therefore throw out this, with the view that it may be shown that, even if the marriage did take place, and Sir Robert Dudley was the son of the Earl of Leicester, there is no issue of that marriage remaining, and that, therefore, the pedigree will be perfect notwithstanding. In the discharge of my duty, in consequence of the office I have the honour of filling, I have submitted, very humbly, the considerations which appear to me to arise fairly out of this claim.

The inquisition after the death of Margaret Countess of Shrewsbury, who died on the 14th of June, 7 Edw. IV. 1467, was then read, which proved the statement of the Attorney-General, that the manor of Kingston l'Isle was settled on Gerard de l'Isle in the 54th Hen. III. by Alice de Insula, to be held by him and the heirs of his body of the said Alice and her heirs, by the service of one knight's fee; that it was successively inherited by his heirs; that on the death of Elizabeth, Countess of Warwick, it devolved on her three daughters and co-heirs; that on partition of the lands of their mother, the said manor was assigned to the said Margaret, who became solely seized of it; that in the 29th Hen. VI. she had granted the office of parker of Kingston Park to John Wenlock, Esq., and in the 4th Edw. IV. granted him the office of steward of the manor of Kingston l'Isle; that she held that manor, by the service of one knight's fee, of the heirs of the aforesaid Alice, and died seized of the same; and that her grandson, Thomas Talbot, Knight, Viscount l'Isle, was her heir, and then of the age of nineteen and upwards.

The fine levied in the 54th Hen. III. by which the manor of Kingston l'Isle was settled on Gerard de l'Isle, by Alice de l'Isle, was also read. Evidence was produced that the State Paper Office and Chapter House had been searched for the depositions, supposed to have been taken upon an information filed by the Attorney-General against Sir Robert Dudley and others, for a conspiracy, and that none were found there; that the Rolls Chapel had been searched, to ascertain if there was an enrolment of the letters patent granted by Charles the First to the Duchess Dudley, but that there are not any patents or charters of the 19th or 20th years of King Charles on record; nor are there any privy seal bills of those years in that which would be the proper depository; that there were a few at the Chapter House in the 19th Car. I., but none in the 20th; that there is a chasm at the Rolls Chapel of two years; but that no enrolment of the charter in question was found, either at the Chapter House or Rolls Chapel.

*Mr. Illingworth* was asked whether he had examined patents of the date of the 18th of Henry the Sixth, and the date previous, and subsequent to, that period, for the purpose of ascertaining whether the words *Auctoritate Parliamenti* are inserted at the foot of those patents? and stated in reply, that previous to the 18th of Hen. VI. there is no such entry; that he knew it by his experience, having been deputy-keeper of the Records in the Tower, but that he had lately made search, and found, that immediately after the passing of that statute these words were added, and that he was able to say, that these words had reference to the enactments contained in that statute.

*Sir George Nayler*, Garter King of Arms, produced a book called *The Earl Marshal's Book*, containing a copy of the patent creating the wife of Sir Robert Dudley Duchess Dudley, and giving the precedence of duke's daughters to

her daughters<sup>1</sup>, which copy is thus attested : 'Convenit cum recordo ita testor' Will'm's Dugdale Norroy Rex Armor'. After several questions had been put to the witness as to the nature of the book he had produced, and the practice of the Herakls College,

*Mr. Hart* stated, that he considered the evidence open to objection, but that he did not feel it necessary to press the objection.

The counsel were informed, that the House had made a distinction in receiving as evidence books from the Herakls College; that where those books contained the substance of the information obtained in consequence of inquiries which were made under judicial authority, when the Herakls were in the habit of travelling round the country, and examining the witnesses, they were held to be evidence, and had been produced in committees of privileges; but that when that ceased, and the books were mere entries of that which the parties had chosen to have entered in those registers, without any due authority being shown for the entry, they had not been received in evidence.

*Mr. Attorney-General* stated, that he offered this in evidence as a copy of a charter for which search had been made in the proper depository, but which could not be found there; that he proposed further to authenticate the instrument by proving that an act of parliament had been passed for the purpose for which it was stated in the charter an act had been brought in.

The act of parliament alluded to was read, which is entitled "An Act to enable Dame Alice Dudley, wife of Sir Robert Dudley, Knt. to assure her estate in the manor of Killingworth, and other lands in the county of Warwick, for valuable consideration, to the Prince His Highness and his

<sup>1</sup> See Appendix.



heirs." A°. 21 Jac. No. 46. A copy of the inscription on the monument of Lady Frances Kniveton, one of the five daughters of the Duchess Dudley, and wife of Sir Gilbert Kniveton, Bart., in St. Giles's Church, was read.

*Mr. Hart* said, that he was not informed whether he was to consider the Attorney-General as insisting on the production of the copy of the charter, as evidence in this case.

*Mr. Attorney-General* stated, that if he was asked whether the charter was legal evidence of the contents of the depositions, he should state, that in his opinion it was not; but that having been directed by the Committee in the course of the last session, to cause inquiry to be made for such information as could be procured upon the subject, and having in the search, in pursuance of the direction so received, discovered this document, he had felt it his duty to submit it to the judgment of their lordships, whether it might be considered as evidence in the present case, which was a matter of favour and not of right.

Adjourned.




*Thursday, 20th April, 1826.*

*Mr. Hart.*—In reply to the observations which were made by the Attorney-General, I feel it incumbent upon me to state, that he has laid his case in answer to the petitioner's with so much accuracy and candour, that it will not be necessary for me to occupy a great portion of your lordships' time.

There are very few facts in which we differ, but there are some conclusions of law in which I take the liberty of differing widely from His Majesty's Attorney-General, and upon that difference as to the law, it will be for your lordships to draw a conclusion.

With respect to the present claim, which undoubtedly is a claim to the favour and grace of the Crown to terminate the abeyance, as between female descendants, if there be a barony in fee, I think I need not trouble myself by making any observations on that point. I do not apprehend that a case of that description would be acted upon by your lordships in any degree differently from what it would be if it were a mere direct claim by a person entitled to a descendible dignity demanding your judgment upon the subject, because I apprehend that in so far as the present reference to your judgment is a reference for the information of His Majesty, upon which information he may or may not be induced to exercise the favour usually obtained from the royal prerogative, the proceedings of your lordships will be precisely the same. You will be governed by the effect of the evidence produced to you, and by the conclusions of law resulting from that evidence. The first proposition that is stated on the part of the petitioner, and which is very fairly met by the Attorney-General, is this, that a summons



to parliament and a sitting under that summons in after-times, creates the dignity of a baron, descendible to the heirs-general of the body of the person so summoned. On the part of the petitioner, it is admitted, that there must be both a summons and a sitting. The only difference between us is a question of law, that is, through what *media* of proof it is competent to come to that conclusion or to reject it. But before I address myself to that part of the case, I think it a duty which I owe to a very learned member of this House, to advert to some observations which were thrown out by him<sup>1</sup>, because his lordship was pleased to say, that those observations were particularly addressed to, and intended to meet, the attention of counsel when they came to reply upon this case. When the case was heard before, an observation was made by that learned lord, who professes very truly to have dedicated many years of his life to the investigation of the antiquity, as I may call it, of your lordships' House—the observation was this, that it appears from the records of those times that many persons have been summoned in the reigns of Edward the First, Edward the Second, and Edward the Third, whose descendants, though summoned in those reigns, have never afterwards been summoned. The consequence which seems to have fixed itself in the mind of that noble lord, and which he proceeds to state, is this, that by giving admission to a claim of general descendible dignity, where there has in *fact* been no sitting under that dignity since the time of the reign of Edward the Second or Edward the Third, you might create a succession of claims by persons whose ancestors have, during those periods, sat in the House, and who, not having been summoned, have not in the interval represented the dignity of a peer of the country, but who might now start

<sup>1</sup> Lord Redesdale.

lowest rank, high as it is ; therefore, such a difficulty, and such an apprehension, cannot be predicated with respect to this family.

The noble lord, who condescended to call my attention to that part of the case, has stated, by way of reason for the apprehension he entertained, that which fairly applies in many cases as a reason, though it is not, in point of fact, applicable to the present case, because we have shewn that we come not within the extent of that proposition, in which his lordship is pleased to state that there were persons who were summoned in the reigns of Edward the First, Edward the Second, and Edward the Third, whose descendants have never sat in parliament from that period. There is not a descendant of that Warine de l'Isle who has not sat in this House by dignities of a description higher than that which is now sought at your hands by this representative of the eldest female descendant of that person. It is true those dignities have been acquired newly, and from time to time, by the grace of the Crown ; but that does not disprove my proposition ; I merely state it to show that there can be no apprehension of a person who has fallen into obscurity, and who ought not to be re-admitted to your lordships' House from his existing condition<sup>1</sup>. I say it illustrates my proposition, that that predicament is not likely to occur ; the descendants have in fact sat, though not by force of this title, and have enjoyed some of the highest dignities in this kingdom. Your lordships will find, by reference to the pedigree, that there are very few of the great families of

<sup>1</sup> It is scarcely necessary to observe, that this statement had nothing to do with the question before the House. The petitioner asserted that he was the eldest co-heir of Warine de l'Isle, who was summoned to, and sat in parliament, *temp.* Edw. III. and Ric. II. ; and that it was competent for the Crown to allow him that barony ; and the House was directed to report whether his allegation was well founded or not. The fitness or unfitness of the claimant was of course a point for the consideration of the Crown alone, and not of the Committee.

this kingdom who have not branched off by connexion and alliance from this family of Warine de l'Isle, and that, from succession of time, they have taken the dignities, by grant of the Crown, of viscount, and earl, and duke, so that we are not now asking of your lordships an admission into this House, even upon clear evidence of pedigree, for a family that has been excluded from the walls of this place from the period of Richard the Second (if we make out that he sat then); but it is scarcely to be said that you have an interruption of half a century since the very high dignities of the representatives of that very high family have been enjoyed in this House. The titles of Leicester and Sidney are so familiar to your lordships' ears, that it is not necessary to repeat them. It is admitted by the Attorney-General to have been clearly and satisfactorily made out, and your lordships will, I think, feel but little pressure from the observation which was made by the noble and learned lord.

Recurring however to the observation that your lordships, whose inflexible justice proceeds upon the strict evidence and upon the decided law of the country, would not make your determination bend to any supposed inconvenience, if the law be settled; the next question is whether the law be settled, and whether in point of fact we bring ourselves within the scope of that law? The Attorney-General has stated what, as a proposition, I am not prepared to deny, namely, that to constitute a barony descendible to the heirs-general of the body of any individual, it is necessary that your lordships should have proof of a summons to parliament and a sitting under that summons. I acquiesce in the proposition that there must be a summons, and there must be a sitting, and each of those must be proved by competent evidence to the perfect conviction and satisfaction of the House; but then the Attorney-General says they must be proved by one, and only by one, distinct and independent species of

proof, and for that purpose he divides the proposition: he says there must be a summons to parliament, and that summons to parliament must be proved by the Record of Parliament itself: he says there must likewise be a sitting under that summons, and that the sitting must be proved by the Record of Parliament itself; and has asserted that, in point of law, those two facts must be proved by a distinct and a specific sort of evidence, and that nothing else will supply the absence of that proof.

That the summons must be proved by the Records of Parliament I admit; the Attorney-General admits that we have proved the fact of summons by the Records of Parliament; we have laid before your lordships a variety of writs of summons, commencing in the reign of Edward III. In the 31st year of the reign of Edward III. Gerard de l'Isle was summoned to parliament; he lived until the 34th year of that monarch, and by the inquisition it appears that he then left his son certainly of full age, but that that son was not summoned to parliament until the 43rd of Edward III. There is a chasm therefore of some years, which ostensibly is unaccounted for. That there was nothing public with reference to the conduct of the person so summoned that should prevent the descendibility of the dignity, if his father was ennobled, to him and his heirs, is perfectly clear: nor is it material for us to account for the chasm, though it is easily accounted for; for according to Dugdale, who has always been received as very great authority, it appears, that when Gerard, in the 34th of Edward III., died, his son Warine was serving the king in his wars in Gascony<sup>1</sup>. That circumstance accounts

<sup>1</sup> Gerard de l'Isle, his father, died 9th June, 34th Edw. III. 1360: although Dugdale says that Warine de l'Isle was then with the expedition into Gascony, his reference to the authority for the statement is erroneous, and the assertion has consequently not been verified, nor do the *Gascon Roll*, published by Carte, mention the fact. See a subsequent note for numerous precedents, in which many years elapsed, after heirs to dignities succeeded their ancestors, before they were summoned to parliament.

for the absence of summons to Warine upon the death of his father, because it would not only have been useless, but would have been prejudicial to him to have been summoned to attend the parliament, considering the consequences resulting from a non-obedience to that summons, unless exercised whilst he was serving his sovereign in his wars in Gascony. The privilege of constituting this House by the great barons of the country, takes its foundation from Magna Charta, which directs that all the great barons shall be summoned to parliament; although that statute was repeated in the reign of his son, and repeated in a great variety of other instances, it was not because it was necessary, but because it was thought desirable to refresh the mind of the monarch—such was the foundation of law. That summons, which the peer was entitled to, imposed upon him the obligation of obeying the summons; it was not merely a species of privilege for the person individually who was so summoned, though he had a right to be summoned by the terms of Magna Charta, but it was a privilege of dignity conferred upon him for the benefit of the community; and the conferring that dignity upon him for the benefit of the community imposed upon him the obligation of attending the parliament to perform those duties that the Houses were constituted to perform in giving advice to the king. So imperative was this duty, that peers were, from time to time, fined for non-attendance. In the reign of Henry VI. the Rolls of Parliament speak this language, that peers who have not attended pursuant to the summons shall be fined at the pleasure of the Crown<sup>1</sup>; and this statute is not the first which creates the obligation of attendance, nor is it the first which imposes fines on peers who omitted to perform the duty of attendance; but this statute, and which I dare say the Attorney-General will say, does not apply to

<sup>1</sup> See note, pages 63, 64.

our case, because it is posterior; this statute of the 31st and 32nd of Henry VI., as it is set out in the Rolls of Parliament, proceeds to state the several fines which should be imposed according to the rank and dignity of a peer, who not obeying the king's summons should absent himself from the parliament to which he was summoned. The prelates, who perhaps in that reign had as much money and less beneficial use for it than the lay lords, are fined in very heavy sums, and the lay lords are fined with less rigour; but still the scale proceeds from the highest to the lowest ranks in your lordships House, and I conceive that it amounts to a declaration of the power of the House to fine, and was not a new rule.

*Mr. Attorney-General.*—You will find at the close that it is declared applicable to that case, and that it is not to be applied to another as a precedent.

*Mr. Hart.*—‘Provided always, that this act prevail not to the hurt of the lords so absent or any of them, saving only to the payment of the same fines,’ that is, that it shall go only to render them liable to the payment of those fines, if absent without excuse; and the fines are applied to the maintenance of the town of Calais and the government of the Marshes; this is extended to those who came not at this time, and no longer. I know not what construction the Attorney-General will put on this, but I say the statute proves that it was considered an imperative duty upon those peers who were summoned to parliament to attend for the purpose of performing the functions for which they were summoned. This is in point of fact so general, that there are upon the records of parliament, the king's licenses, granted to individual peers to authorize them to abstain from or omit the burthen of attending the parliament.<sup>1</sup> There is then the case of my Lord De la Warr, in Dugdale,

<sup>1</sup> See note, p. 65.



vol. ii. folio 17, a recital that he had served the king in many of his wars, that he had no reward for those services, which had been very great, but that having grown old the king thought fit to dispense with his future attendance<sup>1</sup>. Looking at that as a principle upon which this House, from time immemorial, has acted, the first thing that strikes one to answer for the chasm of a summons between the 34th year of Edward and the 43rd year, when his son was summoned, is, that he was not summoned, in order that he might not be subjected to the penalty, nor put to the inconvenience of either sending to obtain the king's license or to justify his necessary absence, which justification was always considered necessary to excuse the non-attendance<sup>2</sup>.

<sup>1</sup> See note, p. 65.

<sup>2</sup> The writs of the reign of Edward the Third, and more particularly those of the reign of Henry the Fifth and Sixth, prove that the names of the barons who were out of the kingdom were generally omitted. The fact is also evident from the writs of the reign of Henry the Fifth, when that monarch was in the wars in France. 1st Hen. V.—*first writ*, 6 earls, 32 barons; *second and third writs*, 2 dukes, 9 earls, 29 barons; 4 dukes, 11 earls, 28 barons; 3rd Hen. V. *first writ*, 2 earls, 17 barons; *second writ*, 3 earls, 16 barons; *third writ*, 3 dukes, 6 earls, 19 barons—4 Hen. V., 3 dukes, 9 earls, 24 barons—5 Hen. V., 1 duke, 3 earls, 14 barons—6 Hen. V., no summonses—7 Hen. V., 3 earls, 13 barons—8 Hen. V., *first writ*, 3 earls, 13 barons; *second writ*, 2 dukes, 6 earls, 20 barons—9 Hen. V., 3 earls, 12 barons—10 Hen. V., no summonses. Prynne, in his *Brief Register of Parliamentary Writs*, has adduced the following example to prove that peers, when out of the kingdom, were not included in writs of summons. By writ, tested 17th January, 9 Edw. II., Roger de Mortimer of Wigmore, was summoned to attend a parliament at Lincoln, in the quindessme of St. Hilary, which writ states, that he was in Ireland when the general writs, tested on the 16th October preceding, were issued; and commands him to attend the said parliament, provided he does not, in the mean time, return to Ireland. Several instances occurred of barons summoned, who were in Scotland, and who received writs, authorizing them to disobey such summonses, among others, to John Segrave and five other barons in the 30th Edw. I., *Appendix, No. I. to the First Peers Report*, p. 181, and to Walter de Fauconberg, and twelve other barons in the 6th Edw. II., *ibid.*, p. 224. The Lords' Committee, in their *Fourth Report on the Dignity of a Peer of the Realm*, p. 88, seem disposed to admit, that being out of the realm, in the King's service, when parliament was ordered to meet, is a sufficient explanation of the omission of barons so occupied, in the writs of summons.

From the 43rd year of that monarch, there was a continued series of summonses up to the death of Edward the Third, commencing with the first parliament afterwards of Richard the Second, and continued down to the parliament of the 5th of Richard the Second ; and between that period and the interval of a new parliament, Warine de l'Isle, who had been so summoned, died without issue male, and consequently could not have his heir summoned. The series of summonses which have been now stated have been admitted as constituting the first position upon which we are to proceed. The next position is, whether we have proved, by that species of evidence which it is competent for your lordships to receive, the fact of a sitting ; and it would not be fit that the evidence on which you decide a right of this description should be permitted to be in the slightest degree conjectural. There are many cases in rights of property between subject and subject, on which your lordships may come to a decision on doubtful evidence, in which those who have to decide can neither be satisfied nor sure that they are deciding rightly, but they are obliged, by the weight of testimony on the one side or the other, to come to the best conclusion the materials before them afford. In that case it is necessary that some degree of conjecture should now and then infuse itself into the most solemn judgment, though every judge, who decides upon a principle of right, may not be quite sure there is not evidence, though incapable of being brought forth, that would produce a different conclusion in his mind. I admit that we must make out to the satisfaction of your lordships, without the possibility of doubt, that Warine de l'Isle did sit in parliament as a peer of parliament ; but that is a very different question from making out that fact in evidence, to your satisfaction, by a Roll of Parliament, and excluding every other species of evidence.

The Attorney-General's position is certainly warranted by

a quotation of some authority ; but I think a quotation that has been mistaken and misapplied. In an extremely well-digested compilation of modern date, by a gentleman of the name of Cruise, entitled a Treatise on the Nature of Dignities or Titles of Honor, he has, amongst other positions with regard to the mode of establishing a descendible dignity to the heirs-general, laid down the position that the proof of a sitting in parliament, by virtue of a writ of summons, must be by the records of parliament ; and for that purpose he makes a quotation from my Lord Coke, which is certainly very much misapplied if it is intended to prove his proposition. Lord Coke says, if issue be joined in any action, whether a person be baron or not, it shall not be tried by a jury, but by the records of "parliament ;" that is a position of law which no one denies ; but that is a very distinct proposition from stating that when the united effect of a writ of summons and a sitting under the writ of summons is to give a descendible dignity, those two must be proved by the Rolls of Parliament, and by no other species of evidence—that every other species is concluded. My Lord Coke himself, great as his legal abilities were, has always referred to the ancient records and the Year Books, or other authentic documents, and the Rolls of Parliament, by way of proof ; and though he lays down that position in the terms I have stated, he has certainly referred to no authority which says that the sitting and summons must be proved by the Rolls of Parliament, and that every other species of proof is excluded. I admit that my Lord Coke, followed by Mr. Cruise, has stated what, in some degree, may be equivocal, that the Roll of Parliament must be the foundation of the proof ; but he can only be said to mean that it is the foundation of the proof to this extent—that the writ of summons must be proved by the Roll of Parliament : he could not have intended that the writ of summons and the sitting must be proved by the Roll

of Parliament; and for this reason—that there never existed, in any stage of the existence of this House, any Roll of Parliament specifically constituted to prove, by reference to that Roll, the fact of sitting; and therefore my Lord Coke cannot have said that a fact must be proved by a Roll, which he knew as well as any person did not exist; and I state, without the hazard of doubt or contradiction, that the only Roll of Parliament by which the creation of a barony appears by record, (entreating your lordships' attention distinctly to the emphatic meaning of the terms "Proofs by record," with reference to the title of a peer of parliament by writ,) is the enrolment of the writ itself, and there is no other enrolment; therefore it could never be the intention of Lord Coke to predicate that that could be proved by the Roll of Parliament, and by no other evidence whatever, unless it can be brought to this conclusion—that a writ of summons, which is a portion of the records of the House, as being enrolled, being repeated from time to time, is evidence upon the records of the House—that the first writ of summons having been repeated, and been repeated more than once, there arises the conclusion from the records of the House itself—that the person so originally summoned had, in obedience to that summons, taken his seat; that that summons having been repeated, the Rolls of Parliament, by that species of pregnant evidence which arises from such a circumstance, sufficiently proved that the peer not only was summoned, but had taken his seat in virtue of the summons.

That principle was also adverted to in Lord Freschville's<sup>1</sup>

<sup>1</sup> In the Freschville case, which will be fully stated hereafter, Sir William Jones, the then Attorney-General, observed, "supposing a summons to parliament by writ did give an estate of inheritance, yet this must be understood when there had been a sitting upon it. Here the not repeating the summons was an evidence of not sitting. It had been objected that there was no evidence of any sitting till the time of Henry VIII., when journals first began: but it was one thing, where writs of summons had been often repeated, another where they never issued but once."—*Cruise on Dignities*, p. 78.

case where there was a single summons, and where there was no evidence of his sitting; that summons had been at a very ancient period, and was never repeated to him. It was there laid down as a proposition, that in as much as sitting pursuant to summons was an integral part of the creation of the dignity, or rather, I should say, of the perfection of the dignity, where there was a single summons, the fact of the summons was no proof of the summons having been obeyed; that the parliament might have been countermanded, as was frequently the case, or the individual might have died, and never have taken his seat; but there it seems to have been admitted inferentially, that if the individual had those summonses repeated, it must be conceived that he had obeyed the king's mandate in those writs, and had taken his seat; and hence it may be said that the sitting was proved by the records of parliament. There is no other way of giving effect to that proposition of Lord Coke's, but by giving it the exposition to which I have adverted, namely, that inasmuch as there was no Roll containing specifically the names of the peers who took their seats under the writs of summons, the repetition of those writs, considering all the consequences which attached to a disobedience of the writ, considering also the high dignities and immunities acquired by accepting the mandate of the writ, the inference must be, that they had been obeyed, or they would not have been repeated to the person disobeying the king's writ.

It might, and it is fair, with a view to contend against the literal construction perhaps of the expression of so great an authority, it might be fair to say, in cases of this kind, that if a baron was summoned pursuant to the mandate of Magna Charta, if the king did not oblige him to attend, he might by possibility omit it; but it cannot be supposed that the head of the state, advised as the head of the state always has been in this country, would have repeated a nugatory invitation to a man to accept the highest dignity a sovereign

can confer upon him, and that he would have omitted for fourteen successive parliaments taking his seat, and yet that the Crown, without coercing his attendance, which the tenor of the writ shows the Crown always had the power of coercing, should have repeated it and have permitted the writ to be treated with contempt and neglect by the party summoned. If there be no Roll of Parliament, but the writ repeated, I think that the fair exposition of the great authority of Lord Coke must be considered as an exposition meaning that the record of parliament would be first, the original writ, next a succession of repeated writs, which by the Roll of Parliament being shown, would be evidence that in some of the anterior meetings of parliament he had taken his seat.

But the authority which my Lord Coke himself quotes from the Year Book does not exactly come up to the sense which, in literal terms, would be attributed to this dictum. In his Institute, and in his Twelfth Report, he refers to the Year Books, to prove the position as I have stated it, namely, that a summons and sitting being necessary, they must be proved by the record of parliament; he refers to a cause in Hilary Term, in the 35th of Henry VI., and he cites a case which had occurred, not arising in parliament, but in one of the courts of inferior jurisdiction to that I have now the honour to address. In attain, in Banco Regis<sup>1</sup>, one of the grand jury challenged himself, inasmuch as his ancestors had been bannerets and lords of parliament, and had been so found by six triers. The court was to give its opinion whether that plea of exemption was sufficiently proved. The question was, whether the person who challenged himself had made out the fact to the satisfaction of that inferior court, that he was a lord of parliament, having been summoned, and having been so found by the triers. The court

<sup>1</sup> See note 1, p. 130.

came to a conclusion which, perhaps, I cannot make very intelligible to your lordships, for after trying to read it for an hour it is hardly intelligible to myself. From the Latin and the English, it appears that they came to a conclusion that they could not allow the challenge, because the mode of evidence by which the party challenging proposed to prove the fact, was not sufficient; for they said that they could not allow it on any other evidence but by the writ. Now that is a peculiar mode of expression, which my Lord Coke does not appear to have adverted to. They use an expression, which I take to be precisely synonymous to our word writ, that it can be proved only by the production of the brief. That is used in the singular number. This very authority, which my Lord Coke quotes not very accurately, but which is transmitted by Mr. Cruise less accurately, still shows that the Court of King's Bench, when they laid down the position, that there must be both writ and sitting proved by record of parliament, proves only that the challenge was disallowed; because the party challenging, to prove himself a peer of parliament, had not produced the writ by which he and his ancestors had been summoned, and that, therefore, the Court of King's Bench could not try that fact *in pais*. It does not follow, therefore, according to the proposition stated by Lord Coke, that both the writ and the sitting must be proved by record of parliament, that is, that the record of parliament must contain the name of the baron taking his seat; for as I again call to recollection, there never existed any roll by which those, who were summoned as peers to parliament, and who took their seats as peers of parliament, were entered of record in your lordships' House; that was left to the notoriety consequential on such a step, the writ being taken to show the right, and that was left to proof, as every other fact must be left to proof, by that pregnant and unanswerable evidence, which ocular or other testimony

might give it, not being exclusively confined to what the Attorney-General has called the Roll of Parliament; for as there was no Roll to prove that fact, neither my Lord Coke, nor any anterior writer, would ever have come to such a conclusion. I would humbly state, therefore, that I think, in looking at the authorities I have adverted to, the repetitions of summons, connected with that which every court of justice always considers the natural conduct of men in public stations, and performing public duties, must have raised of itself a strong and violent legal presumption, that one or other or both of these individuals, Warine and Gerald, had taken their seats in this House.

I will state it only as a strong and violent legal presumption. I should not very much despair of my case, if I were bound to confine myself to evidence, which I could predicate as going no further than that; but if I have satisfied your lordships that there existed no Roll in which the names of the peers taking their seats are entered as a record of parliament, then some other evidence, competent to prove the fact, must be let in: but however difficult, in most cases, it might be to have brought strong and conclusive evidence of the facts, beyond that adverted to, at so remote a period, I shall satisfy the House, I think, from the peculiar circumstances of this case, that there is evidence by the records of parliament that this Warine de l'Isle did take his place. I must, I feel, trespass so much upon your time, as to recall to your recollection what I have stated to have been proved.

Adjourned.



*Monday, April 24th, 1826.*

*Mr. Hart.*—When last I had the honour to address your lordships, I made such observations, in reply to the Attorney-General's answer, as occurred to me to be applicable to the first point, namely, how far a continued succession of writs of summons, issued to an individual, were in themselves, by implication of law, and according to the decisions of this House, to be considered as evidence of a sitting. I likewise applied myself to that which the Attorney-General seemed to think a most important feature in the case, namely, that it was the established law of this House, that there must be evidence from the Rolls of Parliament that a person, claiming the dignity of a peer, founded upon so ancient a title, must prove, by the Rolls of Parliament, that his ancestors had sat in this House, and we differed only upon the single question, whether it was necessary to prove, by the Roll of Parliament, that there had been both a summons and a sitting.

*Lord Redesdale.*—I take it, there is another question that you have to prove, that at the time when Warine de l'Isle, under whom you claim, was summoned, the writ of summons was supposed to have the effect which the judges, in a subsequent time, in the case of Clifton, I think, gave to that summons.

*Mr. Hart.*—I thought there had been authority unquestionable upon that point; and authority unanswerable on the records of your lordships' House, that a writ of summons, issued in the time of Richard the Second, if followed by a sitting, constituted an inheritable dignity.

*Lord Redesdale.*—The time of Richard the Second is a very different period from that of Edward the Third.

There is a striking difference between the two. During Edward the Third's time there was no such thing as a barony by patent, and Richard the Second was the first who created a baron by patent; and the reason of that creation is said to have been, because it was not considered as established law, at least, that the writ would create an hereditary succession<sup>1</sup>.

*Mr. Hart.*—It is not for me to doubt that there is such authority as that to which your lordship refers; but I have not been able to find any authority for stating, that the reason for creating a peerage by patent was a doubt whether a writ gave an inheritable dignity, though I have looked with great attention to the various observations which are contained in that Report, made by a Committee of your lordships' House, to see whether I could get any dictum upon which to fix the proposition, which, if established, I should not have contended against.

<sup>1</sup> It does not appear where this explanation occurs. The much more probable reason of this creation is given in the *First Report of the Lords' Committee on the Dignity of a Peer of the Realm*, namely, that as writs were then held to create a dignity to the heirs-general of the parties who received them, it was the intention of that creation to limit the descent of the title to the heirs *male* of the body of the grantee; and the apprehension that such would be the effect of a general writ may have led, in another case, that of the Baron Vesey, to a specification in the writ of summons of the special heirs, to whom it was the king's intention the dignity should descend, p. 342. In considering this subject, it must be remembered, that no similar creation by *patent* occurred after the 11th Ric. II. until the 11th Hen. VI., a period of forty-six years, during which time several barons were created by writ, whose heirs were regularly summoned. As the patent of the 11th Ric. II. is the only instance of such a creation of a baron before the reign of Henry the Sixth, a reign in which, as one of their lordships' committees observed, "proceedings relating to the peerage ought not to be deemed of much authority;" (*Third General Report on the Dignity of a Peer of the Realm*, p. 202,) as the heir male of John Lord Beauchamp, the person so created in the 11th Ric. II. was never summoned to parliament, though, for a short period at least, he was purged from the effects of his father's attainder; and as numerous creations by writ have taken place between the 11th Ric. II. and the reign of Charles I., the fact in question certainly does not justify the important conclusions which the learned lord has drawn from it.

*Lord Redesdale.*—It was a matter involved in great obscurity.

*Mr. Hart.*—It certainly was. I should not render any service to the petitioner by attempting to evade anything which I find settled in the books on this subject, or discussed and settled by opinions expressed upon this Report; nor derive advantage from attempting to slip by the subject, for any fallacy would be easily detected. I am perfectly aware of the question which has been raised, namely, whether a writ of summons anterior to the period of the reign of Richard the Second—namely, the eleventh year of that reign, which is stated to be the first year in which a patent was granted—whether a writ of summons in an earlier period does, according to the law of this House, if followed by a sitting, give an inheritable dignity.

I can have no difficulty whatever in repeating what has been said before in answer to the argument that has been adduced by the Attorney-General, or to re-investigate the subject from the beginning upon this proposition—that a summons issued to an individual, and that summons followed by a sitting in parliament, whatever might be the date of the summons, whatever might be the date of the sitting, constituted an inheritable dignity. I have said less upon that subject than I should otherwise have done, because the Attorney-General, who answered what I had stated in the opening, admitted that a writ summoning an individual to parliament, and a sitting consequential upon that writ, did constitute an inheritable dignity, without reference to the period at which the writ might have issued and the sitting might have taken place. I understand that to be a conceded proposition; but if it is expedient that I should refer to the authorities upon the subject, I can show it, without the possibility of a doubt, from records and authorities.

I am perfectly well aware of the objection which was

raised upon that report; that it appears from the Records of Parliament that in the reigns of Edward the First, Edward the Second, and Edward the Third, a great variety of individuals were summoned to parliament, whose names do not appear in any subsequent summons to parliament, and from thence an implication was raised, that the Crown at least did not intend to constitute an inheritable dignity by a summons of that description, at least in that age of the constitution. No man is less inclined to doubt the unlimited extent of the prerogative of the Crown in creating dignities and honours than I am; but still there are certain rules which are considered as attendant upon that prerogative, certain rules, which even the privileges of this House require to be attended to. The Crown, having created a dignity descendible to a man and his heirs, and by so doing constituting him a member of this House, it is neither in the power of the Crown nor of the individual, nor of both concurrently, to extinguish that dignity. It seems singular, as a general proposition, looking at what I would call the almost unlimited prerogative of the Crown upon that subject, to say, that he who gave cannot, even with the consent of the party to whom the grant was made, extinguish the grant; and yet that is a proposition settled, I think, in the Lord Purbeck's case; that His Majesty, having been pleased to ennoble the blood of a particular individual with a descendible quality of nobility, it was not competent for His Majesty, with the consent of the party, to extinguish that title by the highest mode of assurance which the law in this country recognises. But why is that? I take it to be because your lordships have privileges which the constitution requires to be protected, and that a particular family, having been once admitted as a constituent part of your lordships' body, were so privileged that that admission was no longer under the controul of the Crown, even with the

concurrence of the parties; and I therefore say, that there are those views of the case, which I have not looked to with great particularity, in consequence of the admission that was made on the part of the Attorney-General; but if that was in all times the law of the country and the law of this House, how is it possible for your lordships to fix upon any particular date?

*Lord Redesdale.*—You are aware there are several resignations of peerages in the reign of Henry the Eighth.

*Mr. Hart.*—I hardly think your lordships will like to take your precedents from that reign.

*Lord Redesdale.*—And in which cases this House made no objection.

*Mr. Hart.*—Nor did this House or the House of Commons make an objection to many worse statutes in that reign. I do not apprehend that the House was in the habit of resisting any thing which his then Majesty was pleased to point out as his will and pleasure; and I should think I did not deal respectfully with your lordships by referring to any thing done in parliament in the reign of Henry the Eighth. When we come to the subsequent reign, we find that law, which is prerogative on the one hand and privilege on the other, had taken their station, and each was as fixed and as immovable as the other. Then when we come to the reign of James the First, the Lord Purbeck, desiring to extinguish the dignity, His Majesty, for what reason I know not, desirous of having the dignity extinguished, and a fine having been levied, this House came to the resolution that that fine was a nullity. Could that fine have been a nullity if that, which was done in the reign of Henry the Eighth, retracting the creation of peerage, was the law of this House, or was at any period the law of the land? I apprehend that in that period it was more likely that such authority should have been cited, and should have been acted upon as prece-

dent, than at the period of the history of the country in which we happen now to exist.

I have little to address to your lordships upon the question, whether a summons to parliament, followed by competent evidence of a sitting, did, at any period, constitute an inheritable dignity. But when you raise a doubt upon that question, you will be so good as to consider, that that which we are now contending for is neither a summons to parliament in the reign of Edward the Second, nor a summons to parliament exclusively in the reign of Edward the Third. It was followed up through the whole period of the reign of Richard the Second, during which the party who was summoned lived. It has certainly been stated, without the possibility of controversy, that during the reigns of Edward the Second and Edward the Third, individuals were summoned to parliament, who did not receive a second summons<sup>1</sup>. But I have not been able to collect, in point of evidence, any where that it is to be made out, from the Records of Parliament, that in the case of this family, whose relations had been summoned for ten, twelve, fourteen, or twenty times, anterior to the reign of Richard the Second, that had not been followed up by an inheritable dignity. It is one thing to say, that particular individuals were occasionally summoned to parliament, who do not appear to have been subsequently summoned, and another thing to say, where the same individual was summoned through a succession of years, whether that does not afford evidence that, according to the law of parliament, being once summoned in that character, he was entitled to be summoned in every subsequent parliament. We know that the writs of summons very frequently commanded the attendance of persons, who, when they attended, did not sit as peers of parliament; they were there as learned or wise men, to assist the Crown and to assist your lordships'

<sup>1</sup> See note, page 105.

predecessors with their advice and experience ; but they were not summoned in the subsequent parliament, because, whatever might be their attributes and their competence to give this advice, it did not follow that their sons would be equally qualified; and I think it is very natural that in those days, a particular individual being summoned, and that not followed by a second summons, that would afford unanswerable evidence that he was there, not as a peer of parliament, but *pro tempore* to assist the peers of parliament in suggesting what might be wise and wholesome; not to concur in enacting the laws and making the constitution, but in the nature of auditors and advisers, to assist the peers in making those laws. But whatever difficulty may hang upon this particular period, which, I think, terminated in the reign of Edward the Third, whatever might be the effect of the habitual summoning and then omitting particular individuals in the reign of Edward the Second, we get to a more fixed period in the reign of Richard the Second ; and then the question is this, whether your lordships can, consistently with the established antecedent practice, constituting the law of this House, fix any year in the reign of Richard the Second, as the time of demarcation, on which you shall say, yesterday being the 10th year of Richard the Second, a summons and sitting is not to constitute an inheritable dignity, but to-morrow being the succeeding year of Richard the Second, a summons and sitting will then constitute an inheritable succession? There may be very wise reasons for fixing on that line of demarcation, but in the course of my experience I never met with any instance of a rule of law, which is supposed to be a rule of reason, in which a court of justice has said, that yesterday that was unreasonable which to-day is reasonable, without any change of circumstances to vary the restrictions to arise upon establishing the rule.

If it were possible to consider it right to establish a rule of that description, then, perhaps, you might say, as the transactions of the reign of Edward the Third, the irregularity in the mode of summoning and omitting, created inextricable obscurity upon the subject, your lordships will fix upon some period. But I would humbly submit that it could not be consistent with any rule of reasoning to fix upon any certain year of any certain reign, without further rule for fixing, except merely that in the eleventh year of Richard the Second the Crown commenced the habit of granting patents of creation<sup>1</sup>. With great humility, if a mere question of right in a particular family were the subject of discussion, I should then rather have attempted to reason inversely; I should have said, if it be doubtful whether there was a summons and a sitting at any particular period subsequent to the eleventh of Richard the Second, it is reasonable to raise every objection to the conclusion, that there had been a summons and a sitting, if the patent is not produced; because the Crown being in the habit of granting patents, it is natural to suppose that a patent would have been granted if the party had been made a peer of parliament; whereas, if there were no mode of ennobling anterior to the eleventh of Richard the Second, I should have said you must look at what is the law generally upon the subject; because, if there be evidence that the party sat in parliament anterior to that period, there is no conclusion, no suspicion can authorize, that it must have been by a patent. That reason is very much in the line of argument adopted by the Attorney-General, Sir Richard Pepper Arden, in the case of Lord Howard de Walden<sup>2</sup>, in giving his opinion to the king. In that case he reasoned thus:—that as patents of creation commenced in the ele-

<sup>1</sup> See note, p. 192.

<sup>2</sup> Cruise on *Dignities*, p. 190.



venth year of the reign of Richard the Second, wherever a man claimed a dignity as descendible, upon the foundation that it was a dignity commencing subsequent to the eleventh year of Richard the Second, it became most important to search, with every degree of accuracy, whether that dignity was not one by patent and not by writ; and he gave this reason, that where a sitting has been suspended by interruption of the lineal male descendant, and it was afterwards granted through a female descendant, if the origin of the dignity was not shown to be anterior to the eleventh of Richard the Second, it might be a creation by patent as well as by writ of summons; but if it were a creation by patent, it might be a creation with specific limitation to male issue, and, therefore, you must, as a foundation in such cases, exclude by proper evidence the existence of a patent of creation, before you can be let into the conclusions and presumptions of law arising from the writ of summons and sittings.

*Lord Redesdale.*—I am looking to the time of the passing of the act of Richard the Second, with respect to the places that were represented in parliament previous to that time, that all the places which then had writs to send members to parliament should continue to have them.

*Mr. Hart.*—I am not prepared with any information upon that subject. There was nothing perfectly fixed at that day, as far as went to summoning the commons, if I may trust to the recollection of what was done at a very early period, with a memory not refreshed by having occasion to refer to it. It was in the discretion of those who issued the writs, or, in other terms, in the discretion of those who had the power of calling for a return of members to parliament; and very few of the lesser boroughs were willing to have the honour of the representation accompanied with the burthen of main-

taining their representatives ; and there were more contentions in the way of supplication to the Crown not to compel the inhabitants of particular boroughs to send representatives, than of complaint by any boroughs of their not having been duly summoned to represent themselves in parliament.

*Lord Redesdale.*—On the Rolls of Parliament of the fifth of Richard II., at its meeting after an adjournment made at the request of the commons, appears an entry purporting, ‘ that the king willed and commanded, and it was assented by the prelates, lords, and commons, that all and singular persons and commonalties who should thenceforth have summons of parliament, should come thenceforth to the parliament in manner as they were bound to do, and had been accustomed in the kingdom of England of ancient time.’ Now the words are ‘ thenceforth have summons of parliament,’ from which I had conceived that there might be an inference, that previous to that time the king assumed at least a prerogative upon the subject, which had been doubted, and that the declaration being from *thenceforth* only<sup>1</sup>, that that might be taken as the line from which the writ of summons to parliament had the effect of continuing the writ.

*Mr. Hart.*—As matter of construction of that act of parliament, I submit to your lordships that that part of the statute must be applied, not to the dignities of this House, but to the Commons of the kingdom.

*Lord Redesdale.*—That I doubt.

*Mr. Hart.*—I submit it for this reason—the king, or the parliament concurrently with the king, could have no right to enact that which would operate injuriously to those who had,

<sup>1</sup> See note, page 63. That Lord Coke considered that statute to refer to *former usages* is manifest from the remark with which he prefaces the Bishop of Winchester’s case [see p. 122, *ante* ;] “ the learned should consider well the statute of 5 Ric. II. stat. 2, cap. 4, and thereupon to consider what (as that statute speaketh) hath been done of old times, &c., and how that act saith *done* and not *said*.”—4 *Inst.* 15.

up to that period, represented themselves, and not the nation at large, as the nobility and great barons of the country. The king and commons had no right to enact that which would tend to the exclusion of the great barons of the country.

*Lord Redesdale.*—There are these words follow—‘ and that whatsoever person of the same kingdom who should henceforth have such summons, be he archbishop, bishop, abbot, prior, duke, earl, baron, bannerett, knight of county, citizen of city, burgess of borough, or other singular person or commonalty whatever, should be absent, or should not come on such summons, if he could not reasonably and honourably (honestment) have excuse towards the king, should be amerced and otherwise punished according to what had of old time been before used in the kingdom in such case.’

*Mr. Hart.*—The expression is, ‘ as they have been accustomed to do.’ The words of the statute are, ‘ which from henceforth shall have the summons of parliament, shall come from henceforth to the parliaments in manner as they are bound to do, and have been accustomed, within the realm of England, of old times.’ Then this must have been an obligation existing prior to this statute, and it implied that those who existed in parliament at that time were entitled in future, if it was a privilege to particular persons. This is not in the language of a statute conferring and limiting a privilege to the barons of the realm; it is only respecting that which the parliament had repeatedly enacted before, namely, that those who were bound to attend the parliament should attend the parliament.

I have great reluctance in repeating that which I stated on a former occasion; but I trust I shall be excused in doing so, seeing that an authority, which has been pleased to recal my attention, does not appear to think that that which was then stated was not conclusive.

With respect to that statute, it is only an habitual repetition of a wholesome law. According to the usage of the present day, when the deliberation of both Houses has made a law, it is supposed that every subject knows the law from that period and in all future times; and there is no instance in modern times, in the more settled state and condition of the country, of an act of parliament passed in the reign of James the First or of Charles the First being re-enacted in the reign of George the First or George the Second, merely for the gratuitous purpose of doing that twice which had once been effectually done. But we know that in that early period it was the habit, in the commencement of all parliaments, to re-enact that which was the fundamental law of the country. I cannot illustrate that better, than by taking up the constitution of Magna Charta, which says, that every great baron shall have summons to the great council of the nation. The omission of that was one of the infringements of right complained against in the time of John; and when the barons were driven to assert the rights of the nation, they constituted this one of the great articles of their charter, and there scarcely a reign passed after that period when the same re-enactment did not take place. Then if there were older acts of parliament precisely in the language, and in the terms, as I may say, of that act of the 5th of Richard the Second, why is the era of inheritable title under a writ to be fixed in the 5th year of the reign of Richard the Second? That statute is only a declaration that the power of the Crown should not be used to violate the rights and privileges of the people; and declares 'that matters to be established for the estate of the king and his heirs, and for the estate of the realm and of the people, ought to be treated, accorded, and established in parliament by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as have

been before accustomed.' What is this, not in the same words, but to the same effect, repeating that those who had had the privilege of attending parliament to give an assent or dissent to the laws that were to bind and to protect them and their property, should be in parliament, as had been accustomed? and the statute of Richard the Second goes no further.

I apprehended that that statute of the 5th of Richard the Second could produce no effect upon the subject. I say that, as far as the judgments of this House deliberately settled are to be attended to as the law of the House, the 5th of Richard the Second cannot be fixed on as the period at which an inheritable dignity should be acquired by writ of summons and sitting. From the case I referred to of the Lord Botetourt, it is quite clear that the 5th of Richard the Second was not the period which can be fixed. I have understood that, by reference to the Report to your lordships' House, the question there suggested was, not whether the line of demarcation should be the 5th of Richard the Second, but whether it should be the period of the 11th of Richard the Second, when patents first commenced; and I know that that was introduced in the reasoning, if I do not mistake, of the Attorney-General Jones, whether that would not be a good line to fix upon the subject.

*Lord Redesdale.*—Have you looked at the printed cases in Lord Botetourt's case? In that case the sitting of several successive Lords Botetourt was very industriously proved<sup>1</sup>.

*Mr. Attorney-General.*—Those were the grandfather and the grandson, my lord.

*Mr. Hart.*—Your lordship has been pleased to ask, whether I have looked at the printed cases in the Botetourt case? I am not at this moment prepared to say whether

<sup>1</sup> This was not the fact.—See notes, pages 153, 154, 155, for a notice of the only proof of sitting received in the Botetourt case.

my statement of that case is taken from the printed cases, or from what other source. I mentioned the Lord Botetourt's case with this view, to show that no era in the reign of Richard the Second, at least commensurate with the 11th year of that reign, can be fixed upon as the line of demarcation; and for this reason, the Lord Botetourt's case was one in which there had been summons to parliament up to the 9th year of Richard the Second. It then vested in a female descendant, and by a severance of the inheritance had been kept in abeyance until the period when he petitioned your lordships in 1764; there had, therefore, been no sitting under that title, subsequent to the 9th year of Richard the Second<sup>1</sup>. That is stated shortly in Cruise's Digest, but to which I do not refer as an authority upon which your lordships are to rely, for I admit that it is inaccurate in many particulars, but that Digest has never been used for any other purpose than to enable parties, by facility of reference to dates, to investigate the original papers.

*Lord Redesdale.*—Mr. Cruise's book is an extremely useful book of reference.

*Mr. Hart.*—I think with as little of erroneous matter as might be expected from a book of that description. Your lordships will find it a fact not to be controverted, that the Lord Botetourt died in the ninth year of the reign of Richard the Second. There was no writ of summons to any person after that period. In the absence of the fact, evidence can only be negative. Mr. Cruise is not to be relied upon implicitly; but I state the case as he gives it as decided.

The barony of Zouch fell into abeyance in the reign of James the Second. This House, in the year 1805, came to this resolution, 'That the barony of Zouch was a barony created by writ in the reign of Edward the Second, and

<sup>1</sup> The latest, and indeed only, proof of sitting admitted in that case was in the 50th Edw. III.—See note, p. 155.

therefore descendible to heirs-general.' Now, taking that as a proposition containing all that was necessary to say upon the subject to give general and unqualified effect to that resolution, it cannot be said of it that, without being subverted, it could be qualified by introducing a limitation as to the period when that dignity was to be considered as inheritable; for this was a dignity arising by writ in the reign of Edward the Second, some sixty years, if not more; previous to the period that we are speaking of.

I stated the Botetourt case, as illustrative of what I was endeavouring to press upon your attention, namely, that there is no period in the reign of Richard the Second that can be safely adopted as a line of demarcation, where the general proposition resolved by the House in the Zouch case could be qualified by your lordships' determination. The Botetourt case was a creation, if at all, by writs of summons to the ancestor of Lord Botetourt. Those writs of summons, I think eighteen in number, issued during the reigns of Edward the Third and Richard the Second<sup>1</sup>; and I do not apprehend that any safe principle could be drawn from contesting, with reference to the evidence of sitting, between a series of eighteen writs of summons and a series of fourteen writs of summons. The only difference there is between that and the claim now laid before your lordships, is, that there is evidence of fourteen writs of summons issued to the ancestor of the present claimant, and that in the Botetourt case there is evidence of eighteen writs of summons. But the principal use I make of that case is this, when it was conceded to me, that, according to the resolution in the Zouch case, generally speaking, a writ of

<sup>1</sup> The series of writs alluded to were addressed to John, the *second* Lord Botetourt, but his grandfather, the *first* baron, sat as a peer of parliament in the 29th Edw. I., and was summoned from the 33rd Edw. I., until his death in the 18th Edw. II., a period of nineteen years. The Botetourt case is fully stated in the APPENDIX.

summons gave an inheritable dignity, when that was conceded to me by the Attorney-General, I had to apply my mind to answer this proposition of his, namely, that we must have not only a writ of summons, but we must have evidence from the Rolls of Parliament that there had been a sitting under that summons, I took leave to submit, what as a fact is not be denied, that there is not a Roll of Parliament in which the names of the peers who took their seats at that period are recorded, and therefore, in the distinct and proper intelligible sense of the terms 'Record of Parliament,' there is no record of that description affording evidence that the Lord Botetourt's ancestor had ever taken his seat in this House under the writs of summons consecutively issued eighteen times, and terminating in the 9th of Richard the Second. The Attorney-General laid it down as an unqualified proposition, that there could be no evidence admitted of the fact of sitting but by a Roll of Parliament. I dare say he will admit that there exists no Roll of Parliament in which entries are made of the names of the barons who took their seats, and therefore that that could not be the sense in which my Lord Coke used the expression, and which has been very much misunderstood by Cruise, that summons and sitting must be proved by record of parliament. The expression used by Lord Coke in that part of the Institute is a loose expression, capable of the sense the Attorney-General puts upon it undoubtedly, namely, that there must be two distinct records of parliament produced to prove two distinct propositions: first, that there had been a writ of summons; and next, that there had been a sitting recorded in parliament.

*Lord Redesdale.*—What case of Lord Coke do you allude to?

*Mr. Hart.*—In the Twelfth Report, the proposition laid down by Lord Coke in his Institute is a general proposition.



*Lord Redesdale.*—There is a case also in the Reports.

*Mr. Hart.*—Lord Coke was in the habit of proving his dicta by reference to authorities.

*Mr. Attorney-General.*—It is the Twelfth Report to which one of your lordships referred.

*Mr. Hart.*—Lord Coke lays down the law of parliament in these terms, ‘the evidence of sitting in parliament by virtue of a writ of summons must be by the records of parliament.’

*Lord Redesdale.*—What is the authority he refers to in support of that proposition?

*Mr. Hart.*—In Lord Abergavenny’s case.

*Lord Redesdale.*—There was no such person as that referred to in that case. It is perfectly clear that my Lord Coke has somehow or other confounded himself, for there was no such person as he describes<sup>1</sup>.

*Mr. Hart.*—If that was the case, he has confounded me.

*Lord Redesdale.*—I only mention it to shew that however great a man he was, in the multitude of cases which he collected, he has made some gross blunders, and that is one.

*Mr. Hart.*—We must take it, I apprehend, as authentic as far as the nature of the subject will warrant it. If it has been discovered there is no such person as Lord Abergavenny, it is very extraordinary that Lord Coke should quote a case of Neville, an ancestor of Lord Abergavenny, and with great particularity, and not only so, but give the dicta of judges. It is not a little singular that he should do this in a case that did not exist. If that were so, I should conceive there

<sup>1</sup> The grounds of the noble lord’s objection to the Report in question are given at some length in the note to the *First Report on the Dignity of a Peer of the Realm*, p. 482, which, with a copy of Lord Coke’s Report, will be found in the APPENDIX. The editor’s reasons are there stated for believing in the general accuracy of Lord Coke’s statement, notwithstanding that in a minor point that distinguished judge may have been mistaken.

must have been some other case in which that language was held.

It is said to have been resolved in that case by the Lord Chancellor, by the two chief justices, by the chief baron, and divers other justices. Now it is not for me to say whether these were a real Lord Chancellor and Justices of flesh and blood, or whether they were an imaginary Chancellor and Justices of my Lord Coke's; I can only read what he has written, that it was resolved by them in these terms, 'That the direction of divers writs did not make him a baron,' that is, Mr. Neville as Lord Abergavenny, 'or noble, until he did come to the parliament, and there sit according to the commandment of the writ; for until that, the writ did not take its effect, and the words of the writ were well penned.'

*Lord Redesdale.*—What is the date he gives there?

*Mr. Hart.*—In the 2nd and 3rd of Queen Mary; that must mean Philip and Mary.

*Mr. Attorney-General.*—May I be allowed to suggest, by way of explanation, that that case which has been referred to, is 8th James I., which was in the years 1610, 1611; now I find that a claim was made for the title of Abergavenny in the year 1604, and that that claim was decided by this House in favor of the claimant, so that in the year 1604, seven years before the decision of that case, there must have been a claim to the title and dignity of Baron Abergavenny. I only mention that, in consequence of its being stated that there was no Lord Abergavenny at the distance of that case from the other which is mentioned. It appears there must have been one. Perhaps I may in the hurry have made some mistake as to that, and it is desirable that the fact should be ascertained.

*Mr. Hart.*—I feel difficulty in making observations upon the Lord Abergavenny's case as tending to correct the misinterpretation of Lord Coke's own doctrine. If I am bound

to doubt whether there existed any such case as the Lord Abergavenny's as here recorded, whether there be a mistake or not in the name of the case, it is not for me to say ; but unquestionably my Lord Coke has stated that case as illustrative of his doctrine—that doctrine is laid down in a few words, which are, that the question peer or no peer, must be decided by the records of parliament. The Attorney-General, from the authority of the dictum in the ' First Institute,' said that the summons must be proved, and the sitting must be proved, by matter of record. I am sorry to repeat that proposition of the Attorney-General; but I am under the necessity of doing it, because I cannot make myself intelligible without following up the proposition with the answer that is to be given to it, and the authority upon which I can found that answer to the Attorney-General's reasoning; and I shall call it to your lordship's attention distinctly thus—The Attorney-General says, there must be proof of being summoned to parliament by a Roll of Parliament, and that in the absence of either of those proofs the man is not a peer of parliament; and the Attorney-General then follows that up, and says, the authority of Lord Coke amounts to this, that whatever may be the force of evidence laid before the House to prove the fact of sitting, this fact of sitting can only be proved by the Roll of Parliament; and the House is bound to shut its eyes to every other species of evidence, however conclusive, however inevitable, in its proof—that was the proposition, and I take it up, thus unquestionably reading the dictum of my Lord Coke in the ' First Institute,' folio 16. The obvious meaning of that dictum, I admit, is as the Attorney-General states it to be, but it is not exclusively liable to that interpretation; and I said that dictum may be true in this case, if my Lord Coke considered, what has always been considered, that a series of summons issued from time to time to the same individual raises an inference by record of par-

liament, that the individual summoned had taken his seat on some or other of those occasions. I admit that the proof of sitting is, in that case, by record of parliament; it can be hardly called a record upon the Roll; but it is an inference, a presumption of law — such a one as the mind cannot refrain from adopting when presented to it, looking at the effect of a summons and of the mutual obligations and rights of the barons of that period, that they had the privilege of being summoned, that they had a right to require it, and that it was the prerogative of the Crown to require their attendance. Those obligations being mutual, it cannot be supposed, if the record of parliament, if the Roll of Parliament, shows that for fourteen successive years an individual was summoned to parliament, and his disobedience to that summons, which disobedience would be highly penal upon him, was not noticed; that if it does not appear that any penalty was exacted against him for his disobedience to the writ, the inevitable conclusion from the Rolls of Parliament, taking the writ to be an affirmative writ, and the absence of the name to be negative evidence from the records; the conclusion is inevitable, that he must have taken his seat. I admit that does not come up to the difficulty of one of the propositions which one of your lordships has thrown out, namely, sitting, at the particular period, after summons—that I will endeavour to deal with hereafter. I did not do it before, because the Attorney-General raised no such distinction, whether time, with the united circumstances, created that descendible dignity, provided the union of the two were made out by legitimate evidence. Lord Coke does not say the summons and the sitting must be proved by the records of parliament, that in the interval from the beginning of the summons to the last of the summons, there must have been a sitting; that there must have been one, and I endeavoured to illustrate it by showing that those who were summoned

were always under an exaction and coercion to attend, that it was highly penal in a peer of parliament not to attend according to the tenure of the king's writ; thence your lordships recollect that all those writs contain not an invitation to the person, but the king's command, to attend at his peril. That raises, I think, a conclusion in law, from the record of parliament saying he was repeatedly summoned, that he had obeyed the writ. In all cases of this kind, for a series of ages, there must have been a disobedience to a certain extent to the writ in some individuals; then, how have those individuals been dealt with at common law? I have stated, that an individual who failed to perform the duty of attendance, was subject to grievous penalties, and that there are many instances to be found on record, in which the punishment followed the delinquency<sup>1</sup>. Since I was last before your lordships, I have had an opportunity of consulting the authorities upon the subject, and I think, that you will find it is impossible to doubt that a man who had been summoned consecutively fourteen times to parliament, could have omitted to appear and take his seat in some or other of those parliaments. In the case of the Lords Stourton and Mordaunt<sup>2</sup>, which took place in the 4th James I., the disobedience of those lords to attend the parliament according to the writ, was attended with very heavy fines inflicted upon them. It is perfectly true, that there was particular occasion for all the lords summoned at that parliament to attend, and they were proceeded against for non-attendance; and as the Attorney-General of that day, in order to aggravate the offence, that is, to increase the fine upon those persons, states various causes for attributing improper motives to them in not attending; but, however, in the

<sup>1</sup> See note, pages 63, 64.

<sup>2</sup> See p. 123.

first part of that report, the Attorney-General begins by stating, that there were four grounds of aggravation on which a fine ought to be inflicted upon the non-attendants Lords Stourton and Mordaunt; the first is, that it was their duty to attend, laying that down as a distinct and undeniable proposition, in the parliament to which they were summoned; that that was one ground on which the court should inflict a penalty and fine. He urges three other grounds, not as grounds showing the authority upon which the absent lords could be fined, but attributing illegal motives to their absence, those motives being attributed with an intent to increase the fine, and which the Attorney-General states was a fine for not attending their duty in parliament. He then aggravates the charge, by showing they neglected their duty from nefarious motives; and went on to satisfy the court, that that which it was called upon to do as an unusual exercise of judgment was warranted by antecedent precedent; and your lordships will find in the report of Moore, the Attorney-General refers for an instance to the Year Books, in which a similar fine was imposed upon an absent lord in the 4th year of King Henry III.<sup>1</sup> He instances another case from the Year Books, which took place in the 3rd year of Edward III.<sup>2</sup>; but then the Attorney-General goes on still further, to show the habit of fining those who did not attend, by referring in the same report to a statute in that reign, which altered the law of the country upon the subject, and a most salutary alteration it was. It appears, that at the period I am speaking of, namely, when those fines were exacted, in the 4th year of Henry III. and the 3rd of Edward III., it was at the option of the Crown either to impose a fine, or to seize into the hands of the Crown the lands

<sup>1</sup> See note, p. 123.

<sup>2</sup> The Bishop of Winchester's case.—See note, p. 122.

of the absent baron. But the Attorney-General in that case shows that that was not considered quite a wholesome mode of correcting an omission which might be very innocent, though not quite excusable; and in the 25th year of the reign of Edward III., a statute was enacted, by which it was declared the Crown should not seize the lands of a baron who omitted to attend, as had previously been done, but that a pecuniary fine should be fixed upon the absent baron<sup>1</sup>; and agrees with the statute cited by your lordships and by the Attorney-General, in which he says, at a latter period, a scale of fines was fixed, to be imposed upon those who did not attend<sup>2</sup>. Those authorities are no otherwise useful, in my humble apprehension, than to show that it was a duty imposed upon all the barons to attend, and the omission to perform that duty was followed by penalty and punishment; and thence to raise the inference, that it was impossible any individual baron could have been summoned fourteen times, and omitted to take his seat during every and each of those years, and yet escape the punishment attendant upon delinquency of that kind.

A further illustration of that proposition arises from the fact, that those barons who found it inconvenient to attend, and had no bodily infirmities to excuse them, were in the habit of obtaining from the Crown dispensation from attendance<sup>3</sup>.

[Here Mr. Hart cited the case of the Lord Delawarr<sup>4</sup>, and proceeded.]

That case has an important bearing, in the way of inferential reasoning, upon the present. If it was thought necessary at all for Lord Delawarr, in the 22nd year of Richard

<sup>1</sup> This was not the purport of that statute.—See note, p. 123.

<sup>2</sup> 32nd Hen. VI. *Rot. Parl.*, vol. v. p. 248.—See note, p. 63.

<sup>3</sup> See note, p. 65.

<sup>4</sup> See page 183.

II., to obtain a dispensation from attendance, it must raise a fair inference, that the duty of attendance was looked to with great accuracy by the Crown at that period; and naturally it should be so, for in those times there were generally forty and fifty, and not more than that number of barons summoned to the parliament, a body not too large to be easily collected, nor too numerous to be burthensome to any deliberation.

I think your lordships will be of opinion, taking these circumstances together, that I do not state the case too highly, when I say that the omission to attend could not be accounted for in the absence of a fine levied upon a person; and that inference arises from this, upon that portion of the evidence which I stated, that Warine and Gerard de l'Isle appear to have been particularly favored servants of the Crown. I stated from Dugdale, that at the period when Gerard de l'Isle, in the reign of Edward III., died, leaving his son Warine, then of age, the reason why Warine was not immediately summoned to attend the parliament, between the 34th of Edward III. and the 43rd of Edward III., is easily accounted for. It appears, that at that time he was serving the king in his wars in Gascony, which was the reason why he was not obliged to obtain a dispensation<sup>1</sup>; the fact of being in the king's service was considered as a sufficient ground of non-compliance to those who issued the writ<sup>2</sup>. The Attorney-General states to me, there is no evidence of that fact upon the table; I state it from Dugdale. The Attorney-General was pleased to say, 'it did not follow that they did not all omit to attend; and no conclusion could be drawn from any expression from the writs summoning to parliament; that it did not follow that all summoned did attend;' I stated, that in what passed in the

<sup>1</sup> See note, p. 180.

<sup>2</sup> See note 2, p. 183.



5th year of Richard II., there was, so far as averment can go without names accompanying the averment, evidence from the Rolls of Parliament that Warine de l'Isle had sat in that parliament of the 5th year of Richard II.. The Attorney-General said, 'that the improbability of the whole body attending was sufficient to countervail the language of that Parliament Roll;' whether that is so or not, it will be for your lordships to decide.

[Mr. Hart then noticed the writs to Warine de l'Isle in the 5th Richard the Second, and the entries on the Roll in that year; on the last of which entries he observed,]

'On which day so came in parliament as well our lord the king as the prelate, duke,' (the dukedom of Lancaster being the only dignity of that description) 'earls, barons, and others the prelates, and others who had the said writs of summons, and being there called by their names,' (this is not unimportant) 'and being there called by their names, the knights of the shires, citizens of the cities, and burgesses returned for that parliament.'

*Mr. Attorney-General.*—That relates to the commons, knights, citizens, and burgesses<sup>1</sup>.

*Mr. Hart.*—The Attorney-General says, those called by their names applied to the knights and citizens. I admit that it was necessary to call by their names persons bound to attend, and who were unknown except as their names should be proclaimed from the returns of the sheriffs; but it could not be necessary to call by name the barons of the kingdom; for it must be presumed that each and every of those great persons knew who was absent, if any were absent. 'On which day came into parliament the earls, barons, and others who had a summons.' Now I conclude, at that period, this is referable exclusively to the barons of the

<sup>1</sup> See note 3, p. 75.

realm; but does not the fair construction of the language imply that all came, that none sent excuse, that none were found to disobey the writ, and therefore there was no occasion to resort to any of those coercive measures which, in anterior ages, were necessary? That I think is a fair construction of the language, that those peers, having been summoned, and having been stated to attend, did so attend. The Attorney-General says it is not probable that all the lords did attend. Why is it not probable? The body was not so numerous as to render it unusual for every person to attend.

*Mr. Attorney-General.*—It is a material fact that the adjournment to which Mr. Hart has alluded is until the next day.

*Mr. Hart.*—This is stated in a book of great legal authority, at least, as an historical memorial of what passed in that early period of our parliaments. I again refer to my Lord Coke, whose authority I hope still stands high with your lordships, notwithstanding he may have committed errors. This singular anecdote, as I may call it, is recorded by my Lord Coke, 4th Institute, page 1 and 2. I will read the language of that great judge ‘And it is observed that when there is best appearance, there is the best success in parliament. At the parliament holden the seventh year of the reign of Henry the Fifth, holden before the Duke of Bedford, guardian of England, of the lords spiritual and temporal, there appeared but thirty in all: at which parliament there was but one act of parliament passed, and that of no great weight. In anno 50th Edward the Third, all the lords appeared in person, and not one by proxy; at which parliament it appeareth——’

*Lord Redesdale.*—Does he give his authority for that?

*Mr. Hart.*—In the margin he refers to the Rolls of Par-

liament, 50th Edward the Third, ' All the lords appeared in parliament '——'

*Lord Redesdale.*—The Roll will show whether there was an appearance or no <sup>2</sup>.

*Mr. Hart.*—I do not read this for the purpose of stating an historical though a legal anecdote, but for the purpose of pressing it into my case ; and I use it as an argument of probability, with a view to extinguish my learned friend's argument of improbability, ' At which parliament, as it appeareth in the Parliament Roll, so many excellent things were sped and done, as it was called *bonum parliamentum*.' I admit that the Parliament Roll will not disclose the names of the identical lords who attended, because the Parliament Roll is only referred to, to prove his proposition, that a great many excellent things were sped in that parliament ; and there is no man who looks at the statute book but will see that that was a parliament which did enact a great many very salutary laws ; but the purpose for which I use it is this—that my Lord Coke, who lived nearer that period, and who might have better sources of information than I have with regard to the absence or the appearance of all the lords, he undertakes to aver, without qualification, that all the lords attended, and not one attended by proxy. One must attribute readily and easily to that great man a spirit of falsification

<sup>1</sup> The authorities are thus cited in the original :—

' And it is to be observed, that when there is best appearance there is the best success in parliament. At the parliament holden in the 7th year of the reign of Hen. V., holden before the Duke of Bedford, guardian of England, of the lords spiritual and temporal, there appeared but thirty in all : at which parliament there was but one act of parliament passed, and that of no great weight. In anno 50th Edw. III., all the lords appeared in person, and not one by proxy : at which parliament, as it appeareth in the Parliament Roll, so many excellent things were sped and done, as it was called *Bonum Parliamentum*.'

*Rot. Parl.*  
7 H. V.

*Rot. Parl.*  
50 E. III.,  
*Bonum*  
*Parliamentum*

<sup>2</sup> It has been before observed, that the *Rolls of Parliament* do not record the names of the peers who attended, unless they were appointed to perform some duty, or were witnesses of a certain transaction, in parliament.—See note, p. 58.

that would make him invent circumstances, or to suppose that he had not some authority for what he stated. It would be attributing to Lord Coke, that he not only invents a record for the benefit of posterity without authority, but he invents circumstances, of which he had no knowledge, for the purpose of authenticating the first invention. If my Lord Coke had confined himself to saying that all the lords attended, he might be supposed to speak in a general sense ; but when he says that all attended in person, and not one by proxy, there must have been wilful falsification, if he had not some evidence before him, that all did attend in person, and not one by proxy. By the printed evidence it will appear that Warine de l'Isle was summoned to that very parliament.

*Lord Redesdale.*—If he is summoned to that parliament, and the Roll of Parliament shows that not one attended by proxy, that is conclusive.

*Mr. Hart.*—If there was no Roll of Parliament to show whether all or any of them attended, there could be no record of parliament. Warine de l'Isle stands in the same predicament as other peers summoned to that parliament. He had a writ issued to him, tested in the 49th Edward the Third, to appear at the parliament which was summoned to meet in the 50th Edward the Third. There the Roll of Parliament stops ; but if it stops, and omits to record the name of Warine de l'Isle as attending, it omits also to record the name of every other baron attending. There is no Roll which records the name of any of them ; which answers the Attorney-General's argument of improbability. I oppose to his improbability, suggested in the year 1826, Lord Coke's positive averment, who must be presumed to have information upon which he made the assertion, that every lord attended in person, and not one by proxy ; and I cannot help repeating, feeling a great respect for the character of that great judge, to whom the law of this country is so much obliged, that that which might be a palpable misrepresenta-

tion of the fact in penal language, must be a false assertion if he had no evidence of the fact he asserts. If he had said all the lords attended, that might be attributed to his understanding that the great body of the lords attended; but when he couples that with saying not only that all attended in person, but that none appeared by proxy, that must be either invention, or stated on the ground of existing evidence; and I apprehend that that existing evidence, which it is reasonable to suppose he possessed, to be sufficient for those who came after him<sup>1</sup>.

<sup>1</sup> When it is remembered that numerous records have perished since Lord Coke wrote; that, after stating in the 'Proeme' to the *Fourth Institute* that he had diligently searched Rolls of Parliament, judicial records, warrants in law, and other 'invisible works,' he says, 'I have published nothing herein, but that which is grounded upon the authorities and reason of our books, Rolls of Parliament, and other judicial records, and especially upon the resolution of the judges of latter times, upon mature deliberation, in many cases never published before, wherewith I was well acquainted, and which I observed and set down in writing while it was fresh in my memory;' that his works bear ample evidence of laborious research among the muniments of the kingdom, (his intimate acquaintance with which he proves by specifying great part of those records, and explaining the origin of the title of one particular class,) his statements become entitled to the utmost respect; and where he cites a document for a fact which cannot now be so verified, we may perhaps conclude that it has been since destroyed. The part of Lord Coke's statement quoted by Mr. Hart is the more likely to be correct, from finding that the other part agrees exactly with the Rolls of Parliament. His lordship says that in the parliament of 7th Hen. V., only thirty spiritual and temporal lords attended; and to a grant of the Crown in that year, we find the names of the Archbishop of Canterbury, ten bishops, one earl, six barons, eleven abbots, and one prior—in all, thirty; *Rot Parl.* vol. iv. p. 117. The language of the Roll of the 50th Edw. III. almost justifies the construction that all the persons summoned to that parliament attended. On the first day, it is said, that '*la greindre partie des prelates et seignors, et aucuns de communes*' were assembled, but as some of the sheriffs had not returned their writs, and also as *aucuns* prelates, earls, barons, knights, &c. '*n'y furent mye adonques venez,*' the King was advised to postpone the 'pronunciation' of the parliament till the next morning; which was done, and proclamation was made that all who had summons to parliament were to be there the next morning at eight o'clock, and that all sheriffs should there return their parliamentary writs '*sur greve payne*. A quel lendemain l'assemblerent les prelates, duc, counts, barons, et les autres grants and communes, justices, sergeants de lez, et autres en la Chambre de Peintee, &c.'—*Rot. Parl.* vol. ii. p. 321. Thus, on the first day, we are told that the greater part of the peers were present, but that as some of them did not attend, the opening of parliament

Looking at the probabilities as they arise from the circumstances, the Attorney-General says that my Lord Coke cites the Rolls of Parliament to show that they all did attend. Lord Coke's quotation is not applied to that position. I admit he states it as a fact, but my Lord Coke only illustrates the conclusion by reference to the Rolls of Parliament. He says, at that parliament I record that every lord attended, and not one appeared by proxy; and so many good laws passed that it was called *bonum parliamentum*. He records that fact in order to enable others to judge whether there were so many good statutes passed. I cannot repeat too often, or press it too strongly upon the recollection of the Attorney-General, that there existed in no period of this House, before the reign of Henry the Eighth, any Roll of Parliament which was a record of the names of the lords that attended<sup>1</sup>. Then we must see whether there existed any Roll of Parliament, so extensive in its effect, with the record of the names of the lords who did attend then. I have stated Lord Coke's assertion that all the lords attended, and none by proxy. When he records the fact in his Institutes, he cites the Roll of Parliament as a record, that all who were summoned did attend. Then

was deferred till the next morning, on which next morning, pursuant to a proclamation made the day before in Westminster Hall, *there assembled* the prelates, duke, earls, barons, and the others, &c. No distinction is made as in the preceding entry of 'the greater part' or of 'some;' but the definite article is used without any qualification; and these entries, coupled with Lord Coke's assertion, that 'all the lords appeared in person, and not one by proxy,' seem almost conclusive of the fact that every peer summoned by the writ of the 50th Edw. III. actually attended in person. It is highly probable that the authority for Lord Coke's statement were the 'Proxy Rolls,' which Selden and Hody inform us were formerly in the Tower, but of which none are now extant. About fifty original proxies of prelates have been preserved among the parliamentary petitions, and will be inserted in the second volume of *Parliamentary Writs*. In p. 5 of the *Fourth Institute*, where Lord Coke speaks of the various additions to the names of peers in writs of summons, he, however, clearly means by the words 'Rolls of Parliament' the Writs, and not the Rolls of Parliament.

<sup>1</sup> See note, p. 58.

looking to the Roll, it appears that he has given such a construction to the general language as I contend for at this moment; for it appears, that the summoning being for a particular day, it then says, that because some of the sheriffs had not returned their writs, and also because some of the prelates and barons, and so on, had not come, the parliament was adjourned to the ensuing day, when they are all, in the ordinary terms, directed to appear. Then the Roll of Parliament goes on in these terms, not expressing in terms that all attended, but using an expression embracing the fact that every one attended. For when that adjournment takes place, because some had not come, and the next day they met, and it is recorded on the Rolls of Parliament that the lords who had been summoned attended, is it not, by necessary implication, to be inferred that they were all present<sup>1</sup>?

*Lord Redesdale.*—Is that the 50th of Edward III.?

*Mr. Hart.*—Yes. I apprehend that your lordships will not enter into nice metaphysical distinctions, but will qualify general words, so as to give a construction which would satisfy an unsophisticated understanding: you will so construe the meaning of the Rolls of Parliament as will satisfy an ordinary mind. I have a right to say, from that quotation in my Lord Coke's Institute, that he construed the language of the Roll of Parliament in the same sense that I construe it. If I read from the writs summoning to parliament, that the Lord de l'Isle was one of the persons summoned in the 49th of the king to meet in the 50th; if I find that that parliament then assembled, and the king adjourned that parliament because some of the barons did not attend, that he adjourned it, with a command that they should attend the next day, and, upon meeting, no other adjournment takes place; and the reason why there was no other adjournment is given on the Roll of Parliament,

<sup>1</sup> See also the argument in the note to p. 61, and in the note to page 219.

namely, that the lords summoned did attend, is it necessary so far to criticise, as for me to say, that the words 'the lords attended' might not embrace all the lords? It is for those who deny it to show, that though the language speaks, that all attended, it is probable that all did not attend, but only some. I take it to be evident, from the Roll of Parliament, that my Lord Coke has either given his exposition of that Roll as aiding his construction of the evidence it records, or that, besides that Roll, he had some materials of information with which we are not acquainted<sup>1</sup>, I therefore conceive, from that expression of Lord Coke's, coupled with the Roll of Parliament, that all did sit; and if all did sit, that Warine de l'Isle was embraced in the term *all*.

I find, that, in subsequent ages, the claim to a descendible dignity has been allowed to a great variety of noble families where the dignity had been long unenjoyed. There are a great many instances in which the inception of the title was anterior to the reign of Richard II., but when the title was conceded by the parliament there was no evidence by the record of parliament of the ancestor having taken his seat in this House; and for a good reason, because there is no direct record of it. There may be incidentally proof by record, but, if I do not mistake, there is a material distinction in evidence between that which is called record, and that which may be considered proof of a fact, arising by production of a record of a collateral and extrinsic fact. For the purposes of showing that lords have sat in cases where we have no means of showing that there had been a sitting under the summons, I again refer to Lord Cromwell's<sup>2</sup> case, who obtained a dispensation. In all cases the writs summoning him were sufficient to entitle him to the right to sit. But you can find no evidence of a sitting in parliament,

<sup>1</sup> See note, p. 220.

<sup>2</sup> Query, Lord de la Warr's case.



the king's dispensation may be said to be proof by record of parliament, but it is not evidenced by the Rolls of Parliament. Another strong case, which I stated, was the case of Botetourt, which comes up, without qualification, to this principle, that there was no record of parliament of Lord Botetourt's ancestor having ever taken his seat.

*Mr. Attorney-General.*—What Mr. Hart states is not the proposition I stated. I said it must appear by the Rolls, and the proceedings, of parliament, that he sat in parliament. The proposition which I submitted, and which my learned friend did not correctly state, is, that according to the language which this House held, and the practice that has always prevailed, it has been considered that the sitting must be proved by the Roll of Parliament giving evidence of that person having sat in parliament; not actually a record of his having taken his seat, but some record of parliament showing he was a member of the House, and acting as such.

*Lord Redesdale.*—According to my recollection of the Botetourt case, there was a great deal of evidence upon that subject<sup>1</sup>.

*Mr. Attorney-General.*—Yes, my lord, he was appointed in parliament, which was one instance, as one of the persons to meet the deputies from Scotland.

*Mr. Hart.*—I shall not shift from the Attorney-General's argument, but meet it in front. That there was evidence

<sup>1</sup> See notes to pages 153, 154, 155. But it is necessary to repeat, that upon examination of the *Committee Book* in the Botetourt case, it appeared that only two proofs of sitting were tendered in evidence; the one, of the 33rd Edw. I., recording that John de Botetourt, the first baron, was one of the peers appointed to treat with the Commissioners of Scotland, on the affairs of that country, but which, after some discussion, was proved not to have been an entry on the *Clause Roll*, but affixed or tacked to it, and was therefore rejected by the Committee; and the other, the *Roll of Parliament* of the 50th Edw. III. recording, that in that parliament, John de Botetourt, the second baron, was one of the mainpernors of Lord Latimer, and which was received as evidence of his having sat in parliament.

no man could doubt; but the instances which the Attorney-General has produced are not evidence proving upon the Rolls of Parliament that he sat in parliament. It is no accurately stated in those authorities from which he has derived his information. I am content to take the Attorney-General's statement in the terms he wishes it, namely, that the fact of sitting in parliament by the ancestor of Lord Botetourt appears by the records of parliament; he cites his authority from Mr. Cruise, and I dare say that is accurate, for though we are not able to find the printed case, Mr. Cruise refers to it to authenticate his statement. I undertake to meet the Attorney-General's proposition, that it appears upon the records of parliament; but I humbly submit, that the instances which he has adduced are not established by record of parliament. I do not deny that the record of parliament affords strong and intrinsic evidence that the Lord Botetourt's ancestor did sit as a lord of parliament; or, that that record of parliament, coupled with the additional extrinsic evidence, would be satisfactory proof that he sat; but evidence by record of parliament which cannot be averred against, and evidence flowing from the records of parliament which it may be difficult to aver against, but will admit of it, is a different thing from that which is stated by the Attorney-General. Let us see what those occasions are. In the 33rd of Edward I., at a period when he had acquired or usurped the dominion of Scotland, a commission issued for two purposes, or rather two commissions issued for two distinct purposes. The first was, to meet and to consult with certain Scotch commissioners upon the affairs of Scotland<sup>1</sup>, and the other commission was to meet the Bishop of Glasgow<sup>2</sup>. Those were concurrent though distinct commis-

<sup>1</sup> *Rot Parl.* vol. i. p. 267. See note 1. p. 153.

<sup>2</sup> *Rot Parl.*, vol. i. p. 179. See note 2. p. 153.

sions; and if the commission had asserted this, that the king our lord, directs his commission to A. B. and C. lords of parliament, why, that would have been a record that they were peers of parliament, sitting as peers, and no averment could have lain against it. The evidence would then have been conclusive to all purposes, that the king had so directed his commission; that would have been the effect of the evidence resulting from the records of parliament; but, when the king's commission is directed to certain lords, who are known to be lords in parliament, and to other persons, is that proof by record of parliament, that every name inserted in that commission was a lord in parliament? Yet, that is the effect of the commission which your lordships will find in Mr. Cruise. If I am accurate in this definition of what is called evidence of record, it must be sufficient *per se* to prevail. Every thing said to be proved by record, is proved by that alone; and if you are obliged to travel out of the record, or to aver out of the record, to repel the evidence or to supply it, then it is not matter of record in the pure sense of the word. In the Lord Botetourt's case, that commission, of which it is predicated that it is a conclusive record of sitting, is a commission directed to certain barons and other persons not barons. If the commission had purported to be directed to other individuals, peers of parliament, I should have admitted that it was conclusive evidence by record; but when you peruse it, and find it addressed to a number of lords of parliament, and to a number of persons not lords of parliament, what is the value of your record as a Roll of Parliament?

*Lord Redesdale.*—What was the evidence with reference to that commission?

*Mr. Hart.*—Mr. Cruise refers to the printed case in folio 274 of his book.

*Lord Redesdale.*—That is the record intituled 'Orda-

tion<sup>1</sup>, &c. It was resolved in the committee that that record is not a record of parliament, and the same was agreed to<sup>2</sup>. It was offered as general evidence.

*Mr. Hart.*—I do not deny it, but I believe there is no portion of evidence that comes within the description given of it. I was content to concede that it contains a portion of evidence by record. The Attorney-General is pleased to intimate that, although the first commission, which your lordship has adverted to, was rejected, yet that the second might not be rejected. Now, I do not say whether it was or not, but I take them all to come under the same objection.

*Lord Redesdale.*—I take it from the entries of this committee of privileges that it does not appear what was admitted in evidence, and what was not. It seems that the resolution of the committee was, that the thing offered in evidence should not be considered so, but what it was, does not appear to be entered<sup>3</sup>.

*Mr. Hart.*—I am not contending that a legal document is not to be taken as legal evidence, but what I am aiming at is to show that this is not one of those instances which the Attorney-General has illustrated by the Botetourt case, which amounts to proof by the records of parliament. Taking the proposition of the Attorney-General in the qualified sense in which I am to understand it, it is difficult, certainly, not to admit that that commission for regulating the king's household contains evidence upon the Rolls of Parliament that John Botetourt was at that time a lord of parliament<sup>4</sup>. That is, if your lordship will knit together

<sup>1</sup> *Rot. Parl.* vol. i. p. 267.

<sup>2</sup> The minutes of the Committee in the Botetourt claim were on the table.

<sup>3</sup> There is no doubt from the entry on the *Committee Book*, that the record which was rejected was that relating to the commissioners of Scotland in the 33rd Edw. I.

<sup>4</sup> *Rot. Parl.* vol. i. p. 443. This record was not adduced in the Botetourt case. See note 1, page 154.

a number of Rolls of Parliament, you may extract from them the evidence of the fact, that such a person must have been in existence as this John de Botetourt, and that he must have been one of the persons selected by the lords under the commission.

*Lord Redesdale.*—I ought to tell you that there is a subsequent entry. The counsel for the petitioner informs the committee that, in consequence of their lordships resolution yesterday, he should waive all other exhibits mentioned in the case to be on the Close Roll, and should only read the exhibit title, ‘Rotulori Parliamentariorum<sup>1</sup>.’

*Mr. Hart.*—I am now to understand that all the antecedent instances stated by the Attorney-General were rejected by the House, as not constituting evidence of the description which he said they constituted, and that which appears in the 50th of Edward the Third was the only part of that description of evidence which was admitted.

*Lord Redesdale.*—It appears so.

*Mr. Hart.*—Dropping the consideration of these former instances, I now apply myself exclusively, and I hope distinctly, to that which is said to contain evidence by the record of parliament, namely, the instance referred to in the 50th year of King Edward the Third. It cannot be said that that record is conclusive and perfect evidence, that the Lord Botetourt named there was a lord of parliament, though that is the result the mind must necessarily come to by connecting other evidence. I understand your lordship to state that all other instances were rejected by the House.

*Lord Redesdale.*—One was rejected, and then they waived all the rest; they did not allow the Close Roll to be evidence.

*Mr. Hart.*—Then I will apply myself to this question: does the Roll of Parliament in the 50th year of Edward the

<sup>1</sup> The Roll of the 50th Edw. III. See note, p. 155.

Third come up in evidence to show, that those who were sureties to the Crown for the Lord Latimer were lords of parliament? I do not understand that the instrument itself, in which they become *mainpernors* for the Lord Latimer, contains exclusively the names of lords of parliament. I should admit it was conclusive evidence, if there were not a great number of persons mentioned in that record who were not lords of parliament, that is, persons who were never afterwards summoned, as well as persons who were not summoned to that very parliament in which the suretyship is given<sup>1</sup>. If I get to that extent, surely I may be permitted

<sup>1</sup> *Rot. Parl.* vol. ii. p. 326 b. The words of the record are, " Et sur ce le dit Seign'r de Latymer trovast en Parlement, certains Prelatz, Seign'rs et autres, ses mainpernours durant le Parlement, de avoir son corps devant le Roy et les Seign'rs a respondre pluis avant a les articles dont il estoit issint arettez, souz certaine paine et forme comprises en une cedula annexe a ycestes. Et par celle mainprise le Mareschal d'Engleterre luy lessast aler a large, &c." Then follow the names of one archbishop, three bishops, one prior, three earls, and—

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| *Le Sire de Percy, s'il plect au Roi.                          | *Mons <sup>r</sup> . Johan de Montagu.   |
| Le Sire de Nevill.   | *Mons <sup>r</sup> . Robert de Ferrers.  |
| *Le Sire de Roos.  | *Mons <sup>r</sup> . Johan Lovell.       |
| Le Sire de Basset.   | Mons <sup>r</sup> . William de Nevill.   |
| *Le Sire de Clifford, s'il plect au Roi.                       | *Mons <sup>r</sup> . Rauf Cromwell.      |
| Le Sire la Zousche, pur atant come<br>sa terre vaut pur un an. | Le Sire de Berkele.                      |
| *Le Sire Fitz Wauter.  | *Mons <sup>r</sup> . Michell de la Pole. |
| *Le Sire l'Estrange.   | Mons <sup>r</sup> . Rauf de Ferrers.     |
| Le Sire de Darcy.  | Mons <sup>r</sup> . Johan de Burele.     |
| *Le Sire de Bardolf, s'il plect au Roi.                        | Mons <sup>r</sup> . Johan Clanvowe.      |
| *Le Sire de Buttetourt.  | Le Sire de Gomeriz.                      |
| Mons <sup>r</sup> . Johan d'Arundell.                          | Mons <sup>r</sup> . Thomas Morrieux.     |
| Mons <sup>r</sup> . William Beauchamp.                         | Mons <sup>r</sup> . Philip la Vache.     |

Those to whose names the editor has prefixed this mark \* were summoned to that parliament by writs, tested 20th Jan. 49th Edw. III., 1376, by which writs the parliament, which, by writs tested 28th December preceding, was ordered to meet at Westminster on the 12th of February, 1376, was prorogued to Monday after the Feast of St. George, i. e. the 28th April in that year.

Lord Nevill, who is one of those mainpernors, was summoned from the 42nd to the 44th Edw. III., but not again until the 51st Edw. III.; Lord Basset was summoned from the 31st Edw. III. to the 13th Ric. II., but his name does not occur in the writs of the 47th, (there were none in the 48th,) 49th, or 50th Edw. III.; John

to say it is not that species of record of sitting which cannot be averred against. I am entitled to say it might be averred against. Permit me to suppose that an issue were joined at this moment upon the question of fact, whether the Lord Botetourt, in the 50th year of the reign of Edward the Third, was a lord of parliament, and that record were produced for the purpose of showing that he was at that time sitting as a lord of parliament. If I, referring to the entry itself, see in it the name of an individual who was never summoned to that parliament, and who was no lord of parliament, why surely I might be permitted, if it were produced as specific and independent evidence of the fact of sitting, to aver against it, for we can show that this record contains a number of persons who were never summoned to parliament; and therefore it is not of itself distinct and conclusive evidence that all the persons there named sat as lords of

Lord Darcy died in the 36th Edw. III., leaving Philip his brother his heir, who became of age in the 47th Edw. III., but he was never summoned to parliament until the 1st Ric. II. The Monsr. John d'Arundell was probably the individual who was summoned for the first time in the 1st Ric. II. Lord Berkeley succeeded his father in the 42nd Edw. III., and became of full age about the 48th Edw. III., but he is not recorded to have been summoned before the 5th Ric. II. None of the others were ever barons of the realm. Hence it appears, that of the twenty-six lay persons under the rank of earl, who were mainpernors for Lord Latimer, only thirteen were expressly summoned to that parliament as peers; two were summoned to previous and subsequent parliaments; two, though undoubtedly barons by descent and of full age, were not summoned until two or more years afterwards; one was summoned for the first time in the 1st Ric. II; and eight never were summoned, nor were ever considered as barons of the kingdom, though some of them, if not all, were bannerets. Upon this subject, the Lords' Committees, remark, in their *Fourth Report*, p. 88, 'It ought, however, to be observed, that it has been asserted, and there seems to the Committee reason to believe, that some persons who were earls or barons have been present, though their names do not appear on the Roll of writs of summons for that parliament, particularly in the cases of persons who, when the parliament was first ordered to be summoned, were absent on the king's service: in which cases writs may not have been ordered to be issued to them because they were so employed, and therefore could not attend whilst engaged in that employ, and if before summoned to parliament, they may have attended without any special writ issued for the purpose.'

parliament. You may combine with it some collateral extrinsic evidence, to render the proof complete; but you are not to take it in the sense of a sitting being shown by the Rolls or Records of Parliament, and that that alone is admissible as proof, and that the House is bound to shut its eyes to every other species of proof. Among persons who are on that record as *mainpernors* for the Lord Latimer, who were never summoned as peers, are Johan de Burele, Johan Clanvowe, Sire de Gomerriz, Thomas Morrieux, Philip de la Vache, and two others; and if it be true that that Roll of Parliament is conclusive evidence that the individuals there named sat, and that it is the only evidence that they sat, it was as competent for either of these individuals, upon a question arising, whether they were lords of parliament or not, to have produced that roll and to have said in any court of justice, here is the Roll of Parliament, and this Roll of Parliament shows that in the 50th of the king I became surety for the Lord Latimer, and that is a proof that I, as surety for the Lord Latimer, am also a lord of parliament. If a lord of parliament were called on to prove that he had had sitting in that parliament of the 50th of Edward the Third, and he had in issue joined between the parties undertaken to prove the fact of his sitting exclusively by the production of that roll, and he had said, 'here you find me in the Roll of Parliament as surety for the Lord Latimer, and therefore it is evidence of sitting by me and my ancestor;' I should answer, the same proof would prove that the other persons sat in parliament, and, therefore, that record is not *per se* evidence of the sitting. I admit that as a record it has great authority, and is strong evidence, coupled with other circumstances, that John de Botetourt was a lord of parliament, though the other individuals were not lords of parliament. But it is not the question whether evidence can be produced which leaves no



doubt, but whether one distinct specific piece of evidence alone can be produced, and which shuts out every other species of proof or inference. If I said more than this, that I resort to the Roll of Parliament to prove that my ancestor in that year in parliament became surety to the king for an individual, that raises a strong inference that he was there as a peer; but that inference does not arise exclusively from that portion of evidence, for I am forced to admit that other individuals are named in the same suretyship that were not lords of parliament, and, therefore, I must exclude the inference when some were not lords and some were lords of parliament. I must exclude the inference that my ancestor was not one of those who was not a lord of parliament, by producing other extrinsic and collateral evidence for that purpose. I must supply the record, I must give additional evidence. When I come to give additional evidence, the road is a very short one and an unanswerable one; for I then produce the writ of summons, and coupling that writ of summons with the inevitable inference arising from the fact of the man who was so summoned being a mainpernor in parliament, then the inference is inevitable, that he must have first taken his seat as a lord of parliament. But that is a very different proposition from saying that no other evidence, although equally cogent, can be admitted as proof, except the Record of Parliament. So that if my Lord Boteourt had had no other proof of his ancestor having sat in parliament, except that suretyship in the 50th year of that king's reign, I say his title must have failed, if the proposition is true, namely, that the record, and the record only, shall be proof of his sitting. That record may constitute an integral part of the proof, but you must make the record apply to the fact, by giving extrinsic and additional evidence of the writ of summons. If that be the case, I am clear in saying that there is no Record and no Roll of Parliament

which exclusively and distinctly describes my Lord Botetourt as a lord sitting in parliament. If I bring it to that extent, then divesting the case of the absolute necessity of proving that distinct fact by an individual and distinct piece of evidence, I am just as much at liberty to be let into the other circumstantial evidence I have adduced to the committee, as Lord Botetourt was at liberty to be let in to this collateral and corroborating evidence which he was permitted to be let into, and which, joined together, made his claim conclusive and unanswerable. But there is another feature arising in this case. In the Parliamentary Roll of the 50th of Edward the Third, a list of names is recorded as mainpernors for my Lord Latimer, among which are the names which I have read.

*Mr. Attorney-General.*—The very title of it is, ‘lords and others;’ and in the recapitulation of the names, you will find De Botetourt is called a lord; and the others are not so described.

*Lord Redesdale.*—It is Sire de Buttetourt.

*Mr. Hart.*—You will find among that class of non-privileged subjects in this list, the ‘Sire de Gomeriz;’ if the word ‘Sire’ constitutes Lord de Buttetourt, as much does it constitute Lord de Gomeriz; I will venture to say that there is no distinction.

*Lord Redesdale.*—All these persons must have appeared in parliament.

*Mr. Hart.*—Yes, there must have been an appearance in parliament, they could have given suretyship in no other way. They must have personally appeared and acknowledged themselves to be indebted to the king, and if the appearance in parliament was conclusive evidence that Lord Botetourt sat, it is equally conclusive evidence that the Sire de Gomeriz sat.

*Lord Redesdale.*—He was in parliament, but it is not evidence he sat as a peer.

*Mr. Hart.*—He had taken his seat in parliament: it is about as conclusive, as that because I am indulged with the honor of standing here to address your lordship, it would be an evidence that I had sat in parliament; I have stood here in parliament some time, but is that a reason it should be conclusive by the record? I have now done with this part of the case, and we then come to the next point, which presents another feature, not a very overbearing one, but in questions of this kind every circumstance is worth attending to, for the purpose of showing, that at that time, namely, in the 5th of Richard II., the summons to parliament raised an implication, that the party summoned had an inheritable dignity. It is not a dignity extinguishable at the will of the Crown so as to omit or refuse the summons. I am informed that every person whose name appears in the writ of summons of the 5th of Richard II., was again summoned to the following parliament, and their posterity have sat in parliament as peers, with the exception of Warine de l'Ile, but that exception arose from the fact, that he died before the summoning of the next parliament, and had no male posterity to represent him. The next portion of evidence, is evidence of sitting by a record of parliament. Whether it is evidence, it will be competent for the Attorney-General to say; but we will aver against that record of parliament—we will show it contains false matter, and if it is shown that it contains false matter in the one part, we undertake to say that the House ought to reject it though it be of record in parliament. Every part is a proposition for your lordships to deal with; but I cannot help thinking that the Attorney-General has treated the king's patent with less of respect as to its integrity than it ought to be treated with; for there is no evidence of it being false, as my learned friend states.

A misconception, or an inaccuracy of expression, in any instrument, is a very different thing from what can be called a falsehood, asserted in the face of contrary knowledge. Not only has every averment, and every recital in that charter, not been falsified by evidence *dehors*, but every recital in that charter is to be taken to be substantially true; and if it be substantially true, your lordships will not criticise the expression, if there be any expression, which admits of criticism. It is to be recollected, that in the 22nd year of Henry VI., a patent of nobility was granted to John Talbot, son of John Earl of Shrewsbury by Margaret, the lineal descendant of Warine de l'Isle, that John Talbot, by a patent, in the 22nd year of King Henry VI., had the dignity of Baron de l'Isle and Viscount de l'Isle granted to him and his heirs.

*Lord Redesdale.*—Not by the same patent. The recitals therein are of importance.

*Mr. Hart.*—It amounts to this; all the ancestors of Warine de l'Isle, and all his ancestors, had seat and pre-eminence in parliament.

*Lord Redesdale.*—It is so recited in the patent.

*Mr. Attorney-General.*—And there are these words, 'from time immemorial, and by virtue of the possession of the manor of Kingston l'Isle.'

*Mr. Hart.*—I shall take leave to say there is no such thing in this patent; I shall take on me to say, there is no such averment in this patent. As it would be an important feature, I have looked at it again and again, for the purpose of seeing whether the impression it has made on my mind is or not founded on a fallacy. I know there is a great deal in the patent that might be more accurately expressed. Now, permit me to call attention to those parts, which, I say, could not have been falsely introduced as recital, without its being competent to predicate the same thing of every patent that passes under the Great Seal. An instru-

ment is produced for the purpose of proving a distinct fact, and you find that fact averred by the recital in the instrument, whether it be a patent or a solemn deed ; and you produce that instrument alone, to prove by the recital the fact. You certainly break down the fact appearing on the instrument, if by turning to another part of the same instrument you show that another recital, apparently as positive as the antecedent recital, is totally false ; then those who are to judge are reduced to this dilemma—if I show that the last recital which I now put my finger upon is false, why may not the first recital be likewise false ? It does not draw you to the positive conclusion, that because the one is false, that therefore the other must be false, though it raises a violent suspicion that the other may be equally false with the first. But then let us see whether there be in this case a single averment to which the odious epithet of falsehood can properly be applied. The patent issued for the purpose of ennobling John Talbot, the son of the Earl of Shrewsbury, then fighting in France. As it might be usual in cases of this kind, it begins with a recital of the pedigree of John Talbot, which so far as it goes cannot be doubted ; because it is admitted that on the present occasion we have verified the pedigree to the extent of showing that every syllable of this preliminary statement is true. After stating John Talbot to be descended from Margaret, a daughter of Elizabeth, the king's relation, it is said that they, that is, the father of John, and Margaret his wife, then had between them a son, named John Talbot, to whom the Earl of Shrewsbury and Margaret his wife had given the manor and lordship of Kingston l'Isle, which they had lately possessed. Now let us refer back to the first recital, and see if that is false. ' Know all men, that whereas Warine de l'Isle Lord de l'Isle'—(the Warine de l'Isle we are now contending was the Lord de l'Isle, and the only Lord de l'Isle)—' deceased,

was lately seised, among other things, of the lordship and manor of Kingston l'Isle, in the county of Berks;' that is the whole recital, that ' Warine de l'Isle, lately deceased, was seised of the manor of Kingston l'Isle, with the appurtenances;' where is there any pretence for saying he was not so seised? he was seised; I do not mean to say he was seised as of a manor in *capite* of the Crown, but it merely predicates of him that which is true, that he was seised of the manor and lordship of Kingston l'Isle. So far there is no imputation of any false recital; and reciting the pedigree, it says, which manor the Earl of Shrewsbury and Margaret his wife lately held as their property, upon the partition of the tenements of their ancestors, and which after their death came to them; and which manor of Kingston l'Isle was partitioned to Margaret. There is an inference arising from this, undoubtedly, that it was considered as a right thing to make the grant of the Crown to him who had taken that lordship which had been so held. It goes on to state, that ' we, considering the premises, and considering that that Warine de l'Isle, and all his ancestors, by reason of the lordship and manor, had had the name and dignity of a Baron and Lord de l'Isle from time whereof the memory of man was not to the contrary.' If the Crown had conceived the fact to be that there was a dignity by tenure, and thought fit to grant it specifically, that is no proof that Warine de l'Isle did not sit as a lord of parliament. Whether they had seats as lords of the manor of Kingston l'Isle is now totally impossible to be traced; but, it is said, that he and his ancestors had had seat in parliament from time immemorial, and that they had had it as lords of the manor of Kingston l'Isle. I admit that there may be distinct portions of a proposition—one true, and the other without imputation; not accurately true—but the one would not negative the other. It is quite clear, that the ancestors of Warine de l'Isle had

had the possession of the manor of Kingston l'Isle from time immemorial, and the very document that the Attorney-General produces as evidence of the falsehood of that averment, that the ancestors of Warine de l'Isle had had the seisin of that manor from time immemorial, is a document proving the affirmative, that they had had that seisin from time immemorial. The document referred to, is the record of a fine levied in the 54th year of King Henry III. by which Warine de l'Isle acquired the seisin of the manor of Kingston l'Isle. That would negative any averment that that Warine de l'Isle, who so acquired the dominion by means of that fine, held of the king *in capite*; but it does not negative the assertion that the ancestors of Warine de l'Isle had been seised of the manor of Kingston l'Isle from time immemorial; and for this reason, indeed, it affords the strongest evidence that it had been so. The effect of that fine was this—that it was levied by a person who appears to have had the seisin in fee of this manor, which was held of the Crown in fief. That fine was levied to Gerard de l'Isle, the ancestor of our Warine, to hold to him. Your lordships recollect that that fine passed anterior to the period before the statute of *Quia emptores*, which prohibited the grants of such lands held of the Crown, or superior lords, to be held of inferior feudatories. At that time, it was competent to a person in the seisin of a fee held *in capite* of the Crown to create a subordinate fee, and by that means to constitute a grantee the vassal of a grantee, leaving the grantee the vassal of the Crown. Now this is particularly a grant of that species; and when your lordships see that a female De l'Isle makes this grant to an individual of the name of De l'Isle, it is an inevitable inference, in the absence of any thing to contradict it, that that fine was levied to the use of Gerard de l'Isle by Alice de l'Isle, the ancestor deriving this estate through a succession of ancestors. But it does not stop there; the uses of that fine are evidence of the family connection be-

tween the cognizor and the cognizee in that fine, and that there was a provision of Alice to a descendant, a puisne branch, to be held of her in chief, when the manor in chief should descend as a subordinate fee. I illustrate that, and prove it by referring to the uses of the fine itself. This manor of Kingston l'Isle, an ancient inheritance of the family, is granted to that Warine to hold to him and the heirs of his body. At that period the statute *de donis* had not been substantially repealed by the device of common recoveries. Therefore that grant to Gerard de l'Isle is to this extent proof, that in a family settlement the parent or the ancestor was about to provide for a junior branch of the family, which was so connected with the head of the family, that it could not be alienated for the grantee. Then further evidence is, that the grantor reserves to herself a pension or annuity of £160 for her life : the estate is to be held by the grantee and the heirs of his body of the grantor and her heirs. Then there is a reservation by the terms of the fine of £160 a-year to be rendered to her during her life, and a service of a knight's fee to be rendered to her and her heirs. I hope that will be thought an extremely important feature, to show that there was sufficient proof that that fine did not constitute the foundation or the inception of that acquisition of this estate by the family of De l'Isle. On the contrary, it is fair to reason that it is evidence that this was an ancient family inheritance, which the head of the family had enjoyed from times of which we have no record. But at the period of the 54th of Henry the Third, an ancestor was seised of it, who was disposed to portion off a part as a subordinate fee, as a provision for a younger branch, reserving out of it to herself during her life a sum by way of rent, and afterwards reserving to her heirs from the grantee the service of a knight's fee ; so much for the value of that fine which is said to countervail the averment of this patent of the king.

Whether that be the case, whether it is so clear from the



averment of the patent, that the ancestors of Warine de l'Isle had had, from time immemorial, seat in parliament, it does not aver that that seat in parliament which they had, was a seat by reason of tenure. It merely states, that they had, from time immemorial, been seised of the manor ; nor does it assert that that seisin gave to them an inheritable dignity or a title of dignity of any kind : it stops there ; but it says the king, considering the premises, namely, that such was the pedigree of the family of De l'Isle, that they had, from time immemorial, been seised of that manor. But it goes on in distinct and specific terms to declare that they had seat in parliament ; not seat as the lords of the manor of Kingston l'Isle, for that requires better evidence than seems to have been offered. But the distinct proposition is, that they had seat in parliament ; but it is said that it is false in the recital, if there be nothing to impugn the integrity of that averment, though he had seat in the parliament. Let us see how probable it is, that the officer, who was to make out the patents, should be mistaken in the fact that Warine de l'Isle had had seat in parliament, or if he was not mistaken in that fact, whether it was possible, in the presence and hearing of living witnesses in the House itself, to have dared to aver the fact that Warine de l'Isle had had seat in parliament ? For this purpose, it is not unimportant to look at the time which had elapsed between the death of Warine de l'Isle, who, by the patent, is stated to have had a seat in parliament, and the date of this patent, and I think it may be considered as a period, or approximating to a period, of fifty years<sup>1</sup>. Was there not in this kingdom, was there not in the constituted body of this House, was there not living memory which could have personally contradicted that false-

<sup>1</sup> Sixty one or two years, a period most likely beyond the memory of any member of the House.

hood, if it had been a falsehood? We are to presume that the patent, the 22nd of Henry the Sixth, had been produced and read in parliament as the ground of a noble lord taking his seat. If it were there recited of a person whose life and birth, and whose death many individual persons must have remembered, and there were probably in parliament individuals who must have known that Warine de l'Isle did not sit in parliament at the time of his death, would the Crown, knowing this was a falsehood, have permitted the imposition to have passed without observation? The Crown had no inducement to place upon the face of its patent a falsehood or a mis-description or a mis-recital of any nature. The authority of the Crown was commensurate with granting with or without reasons; therefore it cannot be well supposed that the Crown would itself recite on the face of its patent a falsehood, for no other purpose than merely reciting a falsehood. If it were not true, it must have been the negligence or the error, for it could not be the fraud, of the person who drew up the patent; for no one can doubt, if John Talbot had been descended from the dregs of the people within the last generation, there were achievements sufficient to justify the king in conferring the rank of nobility upon him and ennobling his blood to all posterity<sup>1</sup>, as every day's experience shows has been the happy habit of this country. John Talbot was the most eminent man in the nation at that time; he did not owe his nobility exclusively to that portion of his pedigree recited there. The king might have an inducement to ennoble him in the life-time of his father, in addition to his other

rights, as being the lineal descendant of a line of barons who had been extinguished with the life of Warine de l'Isle, in the 22nd year of the reign of King Richard the Second. Was

<sup>1</sup> Mr. Hart probably intended to allude to the merits of Sir John Talbot's father, Earl of Shrewsbury, for Sir John Talbot does not appear ever to have distinguished himself in any particular manner.

not that a natural and an obvious ground of reciting that feature among others of his title. I apprehend, therefore, that there cannot be said to be an averment of it by evidence from the records of the House, or that there is falsehood, or that it is brought into doubt with regard to the anterior recital, that Warine de l'Isle's ancestors had had a seat in parliament from time immemorial; but there is a distinct fact here averred, which I say is conclusive evidence that Warine de l'Isle appears, by the record of parliament, to have had seat in this House: it is positive and affirmative evidence of that.

There is another feature of this case, which the Attorney-General has adverted to as containing a falsehood, or to use a mitigated expression, as averring a mistaken fact, namely, that it is asserted that Margaret, together with her husband, the father of John Talbot, had granted the manor to him. The Attorney-General says they did not grant the manor to him. It is admitted that Margaret the mother inherited the estate, and had the seisin of it, but he says, there is no evidence of the fact that they had granted the estate, but there is contradictory evidence; and he produces, to contradict the record of parliament, an inquisition. If there can be no averment against a record of parliament, which the king's patent is, how is it permitted to him to produce a private instrument, an inquisition taken on the death of a tenant of the Crown, to prove that the king's record in parliament contains a falsehood? How is it to be permitted to falsify a king's grant under the great seal, by saying, I will show you that the grant falsely recites a conveyance and a gift from John and Margaret, because I produce an inquisition, which I say must be true; all inquisitions must be true; and that shows that Margaret died seised of the manor. If that were the case, it is but a conflict of evidence between two

specific documents ; and the question is, whether the inquisition averring that Margaret died seised, she having survived her son John ; or whether the king's patent, reciting that Margaret had given her estate to John, is true ? Your lordships must in some cases be reduced to the dilemma of weighing the value of documentary evidence for and against, in order to see to which you are to give the preference ; and if that were the whole of the case, there would be little more to do than to examine whether the king's grant is proof of the fact ; and if there be mistake or falsehood, the inquisition must be mistaken. I say not only that the inquisition must be mistaken, but there is very perfect evidence to show that it probably was mistaken, when it comes in contradiction to the statement in the king's grant. For that purpose your lordships have only to look at the dates which refer to this portion of the pedigree, where it is shown that Margaret, Countess of Shrewsbury, the grantee, died in 1467. She is supposed to have made, and is averred by the patent to have made, the grant to her son. She not only survived her husband, but she survived her son John, to whom the grant was made. John was killed in the wars of France on the 30th of July, in the 31st of Henry the Sixth, leaving an infant son, who survived him. Being an infant at the death of his father, he had no parent to whom the care and custody of his lands or of his person could devolve but his grandmother, the Margaret who had made the grant to his father ; and although the inheritance could not be re-assigned to the mother on the death of his father, yet the care and custody of the lands and of the person of her infant grandson would naturally devolve upon her. She would naturally take possession and be in the ostensible dominion of the estate her son had had. He died without issue before he attained the age of twenty-one years, and left a

sister, Elizabeth, to whom the land would likewise descend, but descend as subject to the care that would attend it in the case of an infant. That Margaret died in 1467; and there is the highest probability that when she died she was in the possession of the estate, and that it was known to be an old family estate. It probably would be unknown to the jury attending an inquisition of this kind, that she, during her life, had divested herself of that seisin, and had transmitted it to her son and his heirs, and that the actual possession which she held at the hour of her death, the usufruct being to her own benefit, it was abandoned for the benefit of the daughter. The inquisition would not investigate the title, if it found two great individuals at the time of their death in the *de facto* perception of the profits; they would naturally return that they died seised of it: that connecting itself with the acknowledged circumstance that she had been seised of it, that the inheritance came into the family as her inheritance, which raises an inference to justify a jury on the inquisition in coming to the conclusion, without falsehood or without mistake, that at the time of her death she was seised of it. But that was a misapplication arising from the circumstance, that at that period her heirs, or rather the heir of her son, who was the grantee, was an infant, and upon her, as the grandmother and guardian, devolved the title to the property. So that the last and only imputation the Attorney-General has thrown upon the integrity of the patent, and consequently upon the value of the evidence arising from it, seems to fall to nothing when it comes to be sifted; and there is nothing to impeach this patent. It would be a mischievous principle if your lordships, or any court of justice, were to permit matters of record ever to be brought into discredit or doubt by suggestions such as have been produced here. That

they could be disproved, that they could be falsified, no man is so weak as to suspect: but here there does not even arise a doubt on the subject: and if it did arise, it has nothing to do with that allegation upon the face of the patent, which is an integral and distinct part of the record of the House, showing that Warine de l'Isle had had seat in parliament as a lord of parliament. There is nothing to impugn or impeach that averment: and I know of no Roll of Parliament, no record from the Journals of this House, that may not be discredited and attempted to be brought into dispute by collateral and extrinsic evidence of such circumstances as have been raised in argument with reference to the immortal session of the manor of Kingston l'Isle, or with reference to the session of Margaret, Countess of Shrewsbury. It is no doubt to be considered from the evidence whether you think there is sufficient to falsify it. If this had been a false averment, there must have been lords in the House at that time who would have exclaimed against the falsehood of the assertion, and whose privileges would have been affected by that false assertion, if it were permitted to stand uncontradicted: for in the 22nd of Henry the Sixth, there must have been a vast number of barons, whose creations being posterior to the death of Warine de l'Isle, would have been displaced. Not only has the possession of a title to a dignity of this kind been the subject of great contest in the House, but the age of that title has been the subject of great contest. There is on the records of this House evidence of a peer having seat in your lordships' House as a baron, but not content with the gradation attributed to him in it with regard to rank among your lordships, he has claimed to have a seat assigned to him, not according to the date of his admittance in your House, but to carry back his title so that he might be seated in an older part of the

barons' bench; and the lords have had much contest upon that subject<sup>1</sup>. There was one case<sup>2</sup> in which half a dozen competing parties were resisting the claim of a particular baron to have a seat at a particular date, and the ground of that resistance was, not that the individual was not entitled to an admission in the House, but that if permitted to found his claim on that particular title, or that particular inception of his title, he would take rank over them; and the House decided that the baron who made his claim had made out that the inception of his title was at a particular period, and it is declared by the House that he should have rank and station on the barons' bench next after the Lord Berkeley and Lord Audley. I do not know whether it is material for me to illustrate my position by saying that if the recital in the patent that Warine de l'Isle had seat in parliament had been false, there were many barons, whose baronies had been created subsequent to the death of Warine de l'Isle, who would have resisted the falsehood, by saying it cannot be made out as a fact. 'We, the living witnesses, know he did not sit in parliament; it is but sixty years ago he died. There are hundreds of persons that can prove that Warine de l'Isle never sat: he did not sit as peer in parliament at the time of his death, as this patent avers'<sup>3</sup>. I must conclude, by the absence of any resistance to that

<sup>1</sup> The case alluded to is, probably, that of Lord Freschville, which will be fully stated in a future note.

<sup>2</sup> Lord Fitzwalter. See next page, and *First Report on the Dignity of a Peer of the Realm*, p. 486.

<sup>3</sup> The patent granting the dignity of Baron de l'Isle to John Talbot gave him no higher precedence than the date of that instrument, though it was probably intended to place him in the precedence of Warine de l'Isle. It is not possible to determine what the precedence of Warine de l'Isle was, whether from the date of the first writ addressed to him, from the date of the solitary writ to his father, or, according to the recital in the patent, among barons whose ancestors enjoyed that dignity from beyond legal memory. As has been before remarked, the writs of summons afford no rules by which to judge of the precedence of peers of the same rank over each other. Very few notices of questions of precedence occur on the *Rolls of Par-*

recital, that the recital was known by the House itself to be true; and it must be taken to be undeniable, because it was undisputed. It was undisputed at the period between the date of the patent and the alleged fact, which might have been disputed by an abundance of living testimony, which could have been brought forward to have impeached it. In the Fitzwalter case, which is stated in page 486, in the notes to the First Report of your lordships' Committee, it appears that Lord Fitzwalter asserted his title to a precedence on account of his high and older title, and that it was decided that, though he stood under an ostensibly junior title, he had a right to be seated according to an older title, and his place in the House was changed on that principle. I cannot help thinking, that that being the practice of this House, that there must have been at that time a great number of barons who were interested personally in resisting such an assertion, if it was not true; and the very silence with which it passed is evidence that it was true.

*Lord Redesdale.*—Does it appear where John Talbot took his seat after that?

*Mr. Hart.*—I cannot find that it appears.

*Lord Redesdale.*—How long before he was created Viscount?

*Mr. Attorney-General.*—‘John Talbot’ is mentioned repeatedly in writs of summons. I do not mean to say that

*liament*, and of those few none of the parties were below the rank of earls. To judge, however, from the proceedings relative to the claim of John Mowbray for precedence of the Earl of Warwick in the 3rd Hen. VI. great attention was then paid to the subject. See *Rot. Parl.* vol. iv. p. 267, *et seq.* The earliest dispute for precedence of one baron over another appears to be in 25 Hen. VIII. between Lord Morley and Lord Dacre of Gillesland. *Lords' Journals*, vol. i. p. 79. The next claim was made by Lord Stafford and Lord Clinton in the 4 & 5 Ph. & M. *Ibid.* p. 422, from which time until the 12th Jaq. I. the only claims that occurred were those of Lord la Warr in the 39th Edw. *Ibid.* vol. ii. p. 192—196, and of Lord Abergavenny and Lady Despenser in the 2nd Jaq. I. *Ibid.* p. 262—346, and 625.



that is an absolute and positive rule, but it appears he generally took his seat much lower down in the list of names than James de Audley. The list of names is in the Appendix to the First Report.

*Lord Redesdale.*—Do you mean the order in which the names are stated? If you compare the different ones, you will find that the order in which they are placed is no rule at all.

*Mr. Attorney-General.*—There is no rule for comparing this, certainly<sup>1</sup>. Will you allow me to refer you to page 916, which is three years after the date of the patent; you will find that he is only fourth from the bottom.

*Lord Gifford.*—There is one earlier than that.

*Lord Redesdale.*—Page 908, 'John Talbot de Lysle' is mentioned, he is five from the bottom. If you look through that list it is impossible that the order in which they stand can decide their precedency, because there Lord Poynynge is placed before Lord Dacre de Gillesland, and Baron Audley before Baron Zouch. Lord Bouchier is mentioned afterwards, and then comes Talbot de Lysle, and then West, and then Scales Chivaler. It can afford no rule at all; it is impossible to infer any thing from that. One of the oldest titles is after a vast number of modern ones.

*Mr. Hart.*—If there does not appear to have been any permanent or fixed rule, nothing is to be derived from it in that view either way. The remaining part of the case to be noticed, arises from an observation thrown out by the Attorney-General. According to our pedigree it was necessary to extinguish the line of issue with Robert Dudley, Earl of Leicester, in the year 1588, in order to show ourselves the representative of the family. We stated that Robert Dudley died without issue male, and in evidence of that fact produced his will, in which he declares that a person of the

<sup>1</sup> See note, p. 70.

name of Robert Dudley, afterwards a Sir Robert Dudley, is what he calls his base-born son. One would think that when a father, such as the Earl of Leicester was, who appears to have been very much attached to that base-born son, and to have given him all that he had the power of giving; when it appears that that son was a man of eminent dignity and character, and of great acquisitions, one would think that if he had been the legitimate son of the earl; if there had been a hope that any series of misrepresentations on the part of the earl would have served to have given legitimacy, or rather the colour of legitimacy, which did not exist, he would rather have done so than to have thrown the imputation of illegitimacy where it did not exist; that I should have thought a fact not to be disputed. But then as the earl died seised of an earldom granted to him and the heirs male of his body, whatever might have been his inclination to stop the descendibility of the earldom, he had no means of doing it, if his son Robert was really his legitimate child. He was not in want of pecuniary assistance; he was a man of great respectability and reputation. Can it be supposed that he would permit that dignity to which, if he was the legitimate son of the Earl of Leicester, he was entitled, to have dropped, and himself to have borne the character of being an illegitimate son, and not an earl and peer of this kingdom, up to the hour of his death? But it is more than that; your lordships are to suppose that he would feel himself so aggrieved and so offended at not being allowed the title of legitimacy, that he went abroad in the service of a foreign prince, where he became eminent, and by whom he was endowed with the highest dignity. Was the kingdom of England at that time like Algiers, or any of those territories where the king could extinguish at his pleasure the highest and dearest privilege of the first nobles of his kingdom? If Robert Dudley

could have made out his title by legitimacy to the earldom of Leicester<sup>1</sup>, is it possible that if the Crown had thought fit, by intrusion upon his rights, to have granted the title of Earl of Leicester, or any other title, to some other favourite, that he would have shrunk from the contest; that he would not have come into this House for the purpose of demanding your judgment whether, without the inclination and against the will of the Crown, he was not entitled to be seated by your lordships? Was there a peer in parliament who would not have supported his right if he was capable of it? because his support would not only have been lent to the purpose of justice, but to the support of his own rights and privileges. If it was said that he went abroad in disgust and broken-hearted, and being refused that title to which he had clearly a right as the legitimate son of his father; if he was supposed to have shrunk from such a contest, capable as he was by his friends to assert his claim; what peer might not have been driven from his inheritance by a grant of the Crown? Another observation is, that the monarch who possessed the Crown was not of that character and disposition to infringe on the rights and privileges of any of his subjects. Whatever we may think of certain peculiarities of his character, in giving way too much to friends to whom he was attached, if Robert Dudley had been the legitimate son of his father, and if he had not had a friend in the world, if it had been in the king's power to have said whether or not he was to inherit the dignity, no man can doubt but the justice and equity of His Majesty's mind would have induced him to have said 'you shall be invested with that dignity.' Then the Attorney-General alludes to the proceedings in the Star Chamber. But those proceedings in the Star Chamber have been noticed, to show that

<sup>1</sup> If legitimate, he would have been also entitled to the earldom of Warwick.

there was a conspiracy between certain nefarious persons to construct a body of evidence, by which it should be made out that he was the legitimate son. These nefarious individuals were conspiring together in concert to construct evidence not to be used *eo instanti*, but to be used at some future period to prove, when time had thrown matters into obscurity, that there had been a marriage between the mother of Robert Dudley and the Earl of Leicester. It does not appear that the Earl of Leicester was contaminated with the vileness of that conspiracy; but it does appear that there was suspicion that his mother was a party to it. Nothing appears from which to impute any thing discreditable to him; but the Attorney-General says it seems from the evidence in the Star Chamber that the witnesses swore to a marriage, at a particular day, in a particular place, between that Lady Douglas Howard and Robert Earl of Leicester. How he derived that information I do not know, except from authorities, upon which I shall presently say a few words. But the Attorney-General gives a singular excuse for the lady, whose character was destroyed by the imputation of having a son without having a husband; he says, 'that Robert Dudley the Earl was anxious to marry the widow of the late Earl of Essex, and that he, Robert, the husband of Lady Douglas Howard, intended to keep her marriage secret, and persuaded her not to assert her title, and that she was induced to do so by the corrupt motive of a promise of great pecuniary reward.' A husband promises his wife a great pecuniary reward if she will abandon the character of wife, and assume a meretricious character, to enable him to commit a felony by marrying another lady, his then wife being alive; and this is to be considered a reason and an inducement for a wife, who was nobly descended, and who must have been the daughter of an earl,

for she is called the Lady Douglas Howard<sup>1</sup>, to permit her only child to be bastardized, herself to be branded as a prostitute, and to undergo every imputation, for the purpose of enabling that kind and affectionate husband to commit a felony by marrying another widow, and that she may commit felony herself; for it is part of the evidence on the subject, that the Lady Douglas Howard, afterwards leaving the Earl of Leicester, and, of course, knowing him to be alive, had married another gentleman. So that in order to give a colour and show of legitimacy to Robert Dudley, you are to suppose this nefarious conduct of a wife bastardizing an only son for a pecuniary reward, with a view of enabling a husband and wife to commit double felonies, the husband by marrying the widow of the Earl of Essex, and the wife by marrying another gentleman! Could you conceive evidence of legitimacy beyond that? I should be wasting time to observe on the species of evidence from whence that is to be derived. They produce a charter, or some letters-patent of Charles I., which, if I have not misread them, are a libel on that unhappy monarch as well as on his father the king of England, and his brother the then heir-apparent. That charter, which is brought from the Herald's office<sup>2</sup>, appears to have been signed by the monarch at a period when he was surrounded by treason and rebellion, when he was driven from his capital and residing at Oxford, for the date shows that it was signed by him at a period when in truth he could refuse nothing to those who asked. It begins by reciting a fraud practised by King James in having unlawfully granted the title to which Robert Dudley had a right to other persons; and recites an im-

<sup>1</sup> She was the daughter of William Lord Howard of Effingham, and widow of John Lord Sheffield. She afterwards married Sir Edward Stafford of Grafton, Knt. — *Dugdale's Baronage*, tome ii. pp. 222, 279.

<sup>2</sup> A copy of this document will be found in the APPENDIX.

sition, as it may be called, supposed to have been practised by Prince Henry in obtaining the castle and estate of Kenilworth from the widow of Sir Robert the son, without paying a fair value for it, having obtained it at a discreditable price; and it then says, that the king himself having had property, and not having paid for it, finding it was not convenient to pay for it, by way of compensation gives to the wife of Sir Robert Dudley the empty title of a Duchess during her life; and this record containing, whether true or not, a libel from the beginning to end on the monarch himself, and upon his elder brother and father, is to be relied on to show that an injury had been done which he intended to recompense by a grant of precedency, when no grant could be a recompense. It then states that she should have precedency according to the rank of duchess; and this evidence is produced to your lordships by way of raising a colour to show that that Robert Dudley was legitimate, and that he by possibility, with a large posterity, if any such existed, would stand in a higher rank. It would be a waste of time to make any observations on this sort of evidence<sup>1</sup>. If you find evidence to lead to the conclusion that Robert Dudley was illegitimate, there is an end to the objection.

*Lord Redesdale.*—Is there any evidence of these proceedings in the Star Chamber?

*Mr. Attorney-General.*—I have made every possible search in all the different quarters where it was likely such documents would be found, without having discovered any; there are apparently some official copies of the evidence in the possession of the claimant.

*Mr. Hart.*—There certainly is nothing that we have not communicated. I could make nothing of them. We have

<sup>1</sup> It is amusing to compare the manner in which Mr. Hart here speaks of the value of a recital in a patent as evidence with his former argument on the point, when noticing the recital in the patent to Sir John Talbot in the 22nd Henry VI.

searched for the proceedings. It is not to be expected there could be much on such an occasion, for the conclusion of that proceeding in the Star Chamber was an order that the deposition should be suppressed or sealed up and not disclosed. How they came to be disclosed, or whether it was only an imaginary disclosure in these letters-patent of Charles I., I know not.

*Mr. Attorney-General.*—In the patent which we produce, by which the wife was created Duchess Dudley, it appears, according to the recital, that the king had read the evidence, and His Majesty states the impression.

*Lord Redesdale.*—That is the patent.

*Mr. Attorney-General.*—From the impression on His Majesty's mind, he seems to have thought the individual Robert Dudley was hardly dealt with.

*Lord Redesdale.*—There is no trace of the proceedings in the Star Chamber.

*Mr. Hart.*—I am informed, that in that process in the Star Chamber ninety witnesses were examined on one side, and seventy on the other.

*Lord Redesdale.*—What are the proceedings in the Ecclesiastical Court?

*Mr. Attorney-General.*—They were for the purpose of perpetuating evidence.

*Lord Redesdale.*—Are they forthcoming?

*Mr. Hart.*—They are part of the proceedings, which the Star Chamber proceeded to reverse; and the learned civilian who presided met with his share of reproof for taking cognizance of the case.

*Mr. Attorney-General.*—Some proceedings were instituted in the Ecclesiastical Court of Litchfield, which were stated to have been taken in that court in consequence of the plague raging in London. The circumstances were such as to induce Sir Edward Coke, at the request of Lord Sydney,

who was connected with the parties, to institute proceedings in the Star Chamber against all the parties who had instituted proceedings in the Ecclesiastical Court, among others Robert Dudley himself, and, I believe, his mother and Doctor Babington, who was a judge of the court, and Sir Thomas Leigh, who was a relative of Lord Sydney's, and several other individuals; four or five of them were found guilty; but neither Dudley nor his mother was found guilty. In the course of these proceedings his mother swore positively to a marriage; and two or three others, who were present at the marriage, swore to its having taken place at the house of the lady, at Esher, in the county of Surrey.

*Lord Redesdale.*—How does this appear?

*Mr. Attorney-General.*—The only way in which I know it is by the courtesy of the claimant; he handed over many of the documents, which appear to be official copies of the depositions, but they could not make use of them as evidence, and handing them over to me in courtesy I could not make use of them.

*Mr. Hart.*—My learned friend has made better use of them than if he had produced and used them as evidence, for he has just stated the effect of the evidence, namely, that the mother swore she had been married at a particular time and place; but I take leave to add to that, that upon her cross examination she admitted that she had subsequently married another gentleman.

*Lord Redesdale.*—And the earl himself subsequently married another lady, therefore it will have the same effect.

*Mr. Attorney-General.*—She stated that her life had been repeatedly threatened, and attempts had been made to poison her, and that her hair and nails had fallen off, in consequence of which she felt no safety for her person, unless she put herself in such a situation as to render herself perfectly secure. I mention this not as evidence. I was mis-



understood, if it was supposed that I was making use of this as evidence ; I merely stated it as a matter of information.

*Mr. Hart.*—It was what nobody could believe from the concatenation of circumstances.

*Lord Redesdale.*—Do you say any thing to the question as to the Earl of Leicester's son, who brought a writ of right<sup>1</sup>?

*Mr. Hart.*—That was at a long posterior date.

*Lord Redesdale.*—Is there any thing on that subject to which you would wish to address yourself?

*Mr. Hart.*—No ; I thought when I first had the honor of addressing the House, the evidence was complete without the possibility of a doubt.

*Lord Redesdale.*—This gentleman claimed the title of Earl of Leicester. He brought a writ of right. It was tried, and then the will of his father was produced, which put an end to his claim ; but the question of his legitimacy was not tried by the writ of right.

*Mr. Attorney-General.*—On his death, his property escheated to the Crown : it was proved he was illegitimate, and the Crown took possession of the property.

*Mr. Hart.*—And gave it his son.

Adjourned.

<sup>1</sup> A natural son of Jocelyne, the last Sidney Earl of Leicester : of his illegitimacy there is not the slightest doubt.

*Thursday, 18th May, 1826.*

*Lord Redesdale.*—The attention of your lordships has lately been called to a petition of Sir John Shelley Sidney, claiming the barony of de l'Isle; and the first question for your consideration in this case is, whether sufficient evidence has been produced that there exists a right of peerage descendible to him, supposing he has made out the pedigree which he has stated in the case laid before you.

The evidence upon that subject has been that of the summons of a person of the name of Gerard de l'Isle in the 31st year of Edward the Third. That Gerard de l'Isle died in the 34th year of Edward the Third: there is no evidence whatever that he had ever taken his seat under the writ issued at that time<sup>1</sup>; and it is rather an extraordinary thing, that if it had been then understood that the issuing a writ to a person, and his taking a seat under it, (supposing he had taken his seat,) gained a right to his issue to have a writ also directed to that issue, that Gerard de l'Isle having left a son of the name of Warine de l'Isle, that he, who was twenty-four years of age, as appears by the inquisition upon the death of his father, was not summoned to parliament until the 43rd of Edward the Third<sup>2</sup>. If your

<sup>1</sup> See p. 3, and notes 1. and 2, p. 144.

<sup>2</sup> It is material to observe, that in the Botetourt case John, the second baron, who became of age about the 14th Edw. III. was not summoned to parliament until the 39th Edw. III., a period of *twenty-four years* after he was eligible to receive a writ of summons, (the only previous writ issued to him, tested in the 16th Edw. III., being a summons to a *council* only,) and that no objections were made on that ground during the claim to that title in 1764. [See APPENDIX.] The circumstance was, however, by no means unusual, as the following instances will show. In the case of the barony of Bardolf the heir for two generations was not summoned for four years after he succeeded; in that of the barony of Everingham the first lord

lordships look into the Parliament Rolls, you will find that there were numerous parliaments between the 34th and the 43rd of Edward the Third<sup>1</sup>, to none of which parliaments was Warine de l'Isle summoned.

was summoned from 1309 to 1315, but lived until 1341, when he was succeeded by his son, who was not summoned until 1371, in which year he died. John, third lord Fauconberg, succeeded his father in 1318, when he was twenty-eight years old, but was never summoned until 1336: he died in 1349, leaving John his son *æt.* 30, but he was not summoned until 1359; he died 1362, leaving Thomas his son and heir, *æt.* 17, who survived until 1376, but was never summoned: the husband of his daughter and heiress was however allowed the barony, *temp.* Henry VI. The first Lord Ferrers of Groby died in 1325, leaving Henry his son, *æt.* 22, but he was not summoned until 1331. The first Lord Fitz-Payne died in 1315, leaving Robert his son and heir, *æt.* 28, but he was not summoned until 1327, and then regularly until his death. William, third Lord Latimer, died in 1335, when his son and heir was only six years old; he became of age in 1350, but was not summoned until 1368. Numerous other instances might be adduced of similar anomalies in the fourteenth century; but the fallacy of the inference will be best proved by similar cases, subsequent to the 5th Ric. II., when his lordship seems to admit that a writ to, and sitting in, parliament, did create an hereditary dignity. Robert, first Lord Ogle, died in 1469, when his son and heir was 30 years old, but he was not summoned until 1482. Thomas Lord Scales succeeded his brother in 1418, when he was of full age, but he was not summoned until 1445. Thomas, fifth Lord Morley, succeeded his grandfather in 1417, when he was 23 years old, but he was not summoned until 1427. Nor is this all; for the omission of writs of summons to one, two, three, four, and even *five generations*, has occurred without the original barony being considered extinguished. In the cases of the Baronies of Clinton, Fitz-Walter, Grey of Wilton, Lumley, Poynings, St. Maur, and Scrope of Bolton, one generation was passed over; in that of West, two; in that of Dudley, three; in that of Ferrers of Chartley, four; and in that of Fitz-Warine, *five*, though the respective heirs survived their majority several years; yet each of these baronies was allowed to the representative, and some of them exist at the present moment. It is also to be remembered, that there are many examples, some of which have been adverted to in the notes to pages 4, 5, and 229, of barons sitting in parliament before writs of summons are recorded to have been issued to them after they succeeded to the dignity. In consequence of these precedents, it is submitted that the inference, that the non-issue of a writ to Warine de l'Isle until nine years after his father's decease raises a presumption that the son was not entitled *ex debito justitiæ* to such writ, is unfounded, more especially as it is probable that he was in the king's service abroad about the time of his father's death, and that being so employed has been held sufficient reason for not summoning a peer to parliament. See notes, pp. 183. 229.

<sup>1</sup> The *Rolls of Parliament* notice the proceedings of only *five* parliaments during that period.

The inference which I conceive ought to be drawn from that is, that at that time it was not understood that the issuing of a writ of summons to a man gained in the person to whom that writ was issued a dignity descendible to his issue; that is the presumption which arises from that fact. Accordingly it would seem that the claimant, aware of that, rather chose to derive his claim from Warine de l'Isle than from Gerard de l'Isle; but I mention this because it seems to me to show pretty strongly, that from the 34th to the 43rd of Edward the Third, the law was not conceived to be, that the issuing of a writ to a man to come to the parliament did gain to that person a right to an hereditary title descendible to his issue<sup>1</sup>.

<sup>1</sup> It is necessary to refer particularly to note 1, p. 101, and to urge again part of the arguments there stated. If the opinion of the noble lord be correct, it must be inferred, that until the 11th Ric. II. when the first barony by patent was created, and again, from that period until the 11th Hen. VI. when the next instance occurred, there were no *hereditary* barons in this country; for if no person was entitled to a writ to parliament, upon the ground that his father or ancestor had been summoned to and sat in parliament, it is impossible to imagine that such right could arise from any other circumstance, as a right to a writ of summons by tenure had long fallen into desuetude; yet during the whole of the period in question, persons were regularly summoned on the deaths of their ancestors; the husbands or sons of the daughters and heirs of these persons were frequently summoned; hereditary dignities created by the first writs respectively issued have been repeatedly recognised; a barony created in the 33rd Edw. I., which fell into abeyance in the 9th of Ric. II., was allowed within the last seventy years, on which decision the present Lord Chancellor, when Attorney-General, has observed—'he was anxious to state how strong that case was, how proper and just that decision was; and how impossible it was that the House could have pronounced any other judgment upon that claim, (see p. 152;) and above all, there are no less than fourteen peers who now enjoy dignities created by writs previous to the 5th Ric. II., many of whose titles have been the subject of discussion and of claim at various periods, between the accession of James the First and George the Fourth. In the long interval of time which has elapsed since the 23rd Edw. I., from which year writs are regularly recorded, it may be asked, has the Crown been always mistaken when it has allowed baronies to heirs-general? Has the House been uniformly wrong when it recognised the claims of such heirs? Have the fourteen noble persons, who now enjoy baronies of a prior creation to the 5th Ric. II., in fact no right to them? Ought King Henry the Eighth to have decided that the Baroness Talboys, whose father was only once summoned to,

In the 43rd of Edward the Third, which was nine years after the death of his father, Warine de l'Isle, who must

and once sat in, parliament, had *herself* no right to the title, instead of merely denying the right of her husband to the dignity until he had issue by her? Were the Lord Chancellor, the two Chief Justices, the Chief Baron, and the other Judges, who resolved in the 8th Jac. I., that a writ and sitting created an hereditary barony, ignorant of the law on the subject? Was Lord Coke equally mistaken when he repeated that opinion? and lastly, were the Judges who came to precisely the same decision in the Clifton case in 1673 as ignorant as their predecessors in 1610? To establish the important fact that Judges who lived about two centuries ago did not know the law which regulated the descent of dignities so well as persons of the present day, it must be shown that facts have been discovered with which they were unacquainted. That no *new light* has been thrown on the subject must be admitted by every person who has read the *Reports of the Lords' Committees on the Dignity of a Peer of the Realm*; for whilst all proper respect is paid to those compilations, and whilst the labour which has been bestowed on them is fully conceded, it is neither presumptuous towards their lordships, nor at variance with the truth, to say, that it is impossible to draw a single positive conclusion from the mass of statements which occur; that amidst much learning there are numerous contradictions and mistakes; and, what is far more material, erroneous deductions drawn from those mistakes. Under these circumstances, it is too much that these *Reports* should be made the basis on which an argument can be built to overthrow the law, as it has been laid down on two occasions, and on each by some of the wisest Judges th is country ever saw, as well as the numerous decisions to which their dicta have given rise, especially when they have been in strict conformity with the practice of more than five centuries. It is also important to observe, that the view taken of the subject by the learned lord is not a new one; that it is very nearly the same as that of Prynne as stated in his *Brief Register*; and that it has been urged on more than one occasion before the House; but it has hitherto preferred to act in accordance with former practice and the dicta of distinguished Judges, to adopting either the theory of a writer whose political principles are a key to his opinions, or the arguments of counsel opposed to a claimant's case. The only ground for the noble lord's argument is, that many persons were summoned in the reigns of Edward I., II., III., and in the first four years of that of Richard II., whose heirs were not summoned. There is not space here to state the result of the examination which has been made of the case of each of the individuals alluded to, and it will only be observed, that many of them can be proved to have been merely summoned in right of their wives; that the assemblies to which others were summoned were not regular parliaments; that in the *great majority* of instances, the heirs of those who were summoned to parliament (but which heirs were not summoned) were under age, were out of the realm, or were females. One or two cases certainly occur in which it is difficult to explain why the heirs were not summoned; but many causes might have prevented it, the nature of which has not reached us.

then have been three or four and thirty, appears to have been summoned to parliament, and he was summoned to several parliaments, during the remainder of his life; but it does not appear, from any entry whatsoever, that he ever took his seat in parliament; at least, there is no evidence sufficient to show it<sup>1</sup>.

It appears by an inquisition taken on the 18th of July, in the 6th of Richard the Second, that Warine de l'Isle died on the 28th of June preceding, and that Margaret, the wife of Thomas de Berkeley, was his daughter and heir, of the age of twenty-two years and upwards. From that time to the present no claim has been made to the dignity of Baron de l'Isle, as derived from the writs of summons issued to Warine de l'Isle<sup>2</sup>. It appears by an inquisition in the 5th of

If we are to conclude that writs and sittings did not create hereditary dignities before the 5th Ric. II., because the heirs of certain barons were not summoned, how can writs and sittings be deemed to create such dignities after that period, if the heirs of persons who were then summoned and sat were not regularly summoned on the deaths of their ancestors? Not only are instances cited in which several generations were passed over subsequent to that epoch in the note to p. 258; but there are cases in which persons were summoned in the reign of Richard the Second, whose heirs *never* received writs to parliament. Nor must it be forgotten, when considering this subject, that a dispensation from attendance in parliament was deemed a mark of extreme favour from the Crown [see note, p. 65]; and that there is *not* a single instance known of a person *asking* to be summoned in the fourteenth century. A few anomalies at the distance of four hundred years, for which we might perhaps be able to account satisfactorily, if every record of the time was preserved, can have little weight in contradiction to general practice; to the case of the barony of Dacre, *temp.* Hen. VI. [see note, p. 102]; to the decision of the king in person in the reign of Henry VIII.; to the opinion of the Judges in the years 1610 and 1673; to the *dictum* of one of the greatest lawyers of this country, who lived two hundred years nearer to the period in question; and to repeated and uniform decisions of the House of Lords since the accession of James the First.

<sup>1</sup> Strictly speaking, no positive and direct evidence—evidence such as the House has demanded—was produced, that Warine de l'Isle sat in parliament. On the *presumptive* proof of the fact, remarks have already been made, more particularly on the entry on the Rolls of Parliament in the 50th Edw. III., and on Lord Coke's corroborative assertion, that *all the peers* then summoned attended. See notes, pp. 58. 61. and 219.

<sup>2</sup> As that fact is frequently pressed, it is necessary to repeat what has been before observed in note 2, p. 99, and what seems a sufficient answer to the remark, that

Henry the Fifth, on the death of Thomas de Berkeley, that Margaret, the daughter and heir of Warine de l'Isle, was then dead; that after her death Thomas de Berkeley held the manor of Kingston l'Isle, a possession which it is necessary to advert to with a view to other parts of the evidence, as tenant by the courtesy. If, therefore, there existed, as was afterwards pretended, a writ of summons to parliament by tenure of the manor of Kingston l'Isle, Thomas de Berkeley ought to have been summoned to parliament as Baron l'Isle: at the same time it should be observed, that Thomas de Berkeley was unquestionably a lord of parliament: he was summoned to and undoubtedly sat in parliament; and he sat on one remarkable occasion, for he was one of the barons who were directed by the parliament to signify to Richard the Second his deposition<sup>1</sup>. It might, therefore, be said, and certainly with truth, that there was no occasion for Thomas de Berkeley to require a writ of summons to parliament in right of his possession of the manor of Kingston l'Isle<sup>2</sup>.

Thomas de Berkeley had issue by Margaret his wife, a daughter Elizabeth, who was her heir, and who married Richard, Earl of Warwick: at the time of his death she was thirty years old, as appears by the inquisition taken upon his decease.

It is necessary to observe, that from the 6th of Richard the Second, when Warine de l'Isle died, to the death of Thomas de Berkeley in the 5th of Henry the Fifth was a period of above thirty-four years, without any thing being

from the death of Warine de l'Isle to the present hour no person has been in a capacity to *claim* the dignity, it having always been in abeyance; and that neither John Talbot, who received the patent of the 22nd Hen. VI., nor Edward Grey, who obtained that of the 15th Edw. IV., were *heirs*, or even *co-heirs*, of Warine de l'Isle.

<sup>1</sup> *Rot. Parl.* vol. iii. p. 424.

<sup>2</sup> Or of his wife.

then advanced warranting a claim of dignity, either as arising from the possession of the manor of Kingston l'Isle, or by descent from Warine de l'Isle; that from the 6th of Richard the Second to the 22nd of Henry the Sixth, which is a material point with respect to this claim, was a period of sixty years, and during that time no claim was made to the dignity, either by descent from Warine de l'Isle, by virtue of the writ, or by any title derived from the manor of Kingston l'Isle<sup>1</sup>.

Elizabeth, the wife of Lord Berkeley, had three daughters—Margaret, the eldest daughter, married John Talbot, Earl of Shrewsbury, to whom she was a second wife, and therefore her issue did not inherit the title of Shrewsbury. The two other daughters were Eleanor and Elizabeth. In the 22nd of Henry the Sixth, a patent was obtained of a very extraordinary description, which states this:—that Warine, late Dominus de l'Isle, died seised of the manor of Kingston l'Isle, in the county of Berks, and had issue Margaret, whom Thomas Lord Berkeley married; and that after the death of Warine de l'Isle the manor of Kingston l'Isle came to Margaret, as the daughter and heir of Warine; and that Thomas Berkeley and Margaret had issue Elizabeth, who married Richard Earl of Warwick, that they had died; that Elizabeth, as the daughter and heir of Margaret, had

<sup>1</sup> His lordship has answered these objections by stating, that Thomas de Berkeley was always possessed of a much older barony, by virtue of which he was uniformly summoned to, and sat in, parliament, and that his daughter and sole heir, by Elizabeth de l'Isle, married the Earl of Warwick; so that neither of these personages could have claimed the Barony of l'Isle in a manner which would have ensured the fact being recorded, namely, *by being summoned as Lord l'Isle*. But there is evidence that Lord Berkeley covenanted that he and his issue by Margaret de l'Isle should bear the arms of l'Isle with their own, which affords strong proof of the importance that was attached to his alliance; and still more, that the Earl of Warwick asserted the right, which he had acquired by his marriage, to the Barony of l'Isle, in the most unequivocal manner, namely, *by assuming the title of 'LORD l'ISLE.'* Neither of these strong facts was however brought to the notice of the Committee. See p. 8.



this manor; that after the death of Margaret, it descended to her; and that Elizabeth had issue by the Earl of Warwick, Margaret, Eleanor, and Elizabeth, all then living; that she and the Earl were dead; that Margaret, the daughter of Elizabeth, married John Talbot, Earl of Shrewsbury; that they had issue; that they held this manor according to a partition which was made between Margaret and her sisters of the inheritance of the mother: it then states that Margaret and her husband granted this manor to their son John and his heirs, to hold of the chief lord of the fee by the services due and accustomed; and then it recites that the king, understanding that the said Warine and all his predecessors, by reason of the lordship and manor aforesaid, had the name and dignity of Baron de l'Isle from time of which the memory of man was not to the contrary, granted, &c. It has been proved by the present claimant, that this recital is absolutely false, for there is no evidence of any person having been summoned to parliament who was in possession of this manor of Kingston l'Isle, but Gerard de l'Isle, and his son Warine de l'Isle, who were summoned in the manner I have stated. It is manifest therefore that the Crown was imposed upon in this patent; and it was necessary for the present claimant to prove this, because he is not lord of the manor of Kingston l'Isle, therefore he could derive no claim whatsoever in respect of that manor.

The patent then proceeds to declare that this John Talbot and his heirs should be, in consequence of their title to this manor of Kingston l'Isle, Lords and Barons de l'Isle in all parliaments whatsoever; this therefore was a declaration that John Talbot, in consequence of his becoming thus seised of the manor of Kingston l'Isle, by the cession of his father and mother, was in right of that manor a lord of parliament by the title of Lord l'Isle; under that, the present

claimant can have no right whatever, because he is not lord of the manor of Kingston l'Isle<sup>1</sup>.

The patent further states, that for removing all doubt with respect to this subject, (for in all probability the persons who devised this patent were perfectly aware the story which it contained was not true,) the king declares that this John Talbot, his heirs and assigns, lords of the manor of Kingston l'Isle, shall be lords of parliament by the name of Baron de l'Isle. That is a special grant, which is confined to persons who should be lords of the manor of Kingston l'Isle; and it gives not only to John Talbot and his heirs, but to his assigns—clearly giving whatever it did give to a person who should be lord of the manor of Kingston l'Isle. The present lord of the manor of Kingston l'Isle has made no claim to the dignity under this patent<sup>2</sup>, and certainly with a degree of prudence, because your lordships have most solemnly determined that the dignity of peerage is not capable of being assigned<sup>3</sup>. Under this patent therefore no

<sup>1</sup> It is to be borne in mind that the petitioner did not claim the dignity of Baron de l'Isle under either of these patents; and that, as the persons to whom they were granted could not by any effort on the part of the Crown have become seised of the original barony, claimed by Sir John Sidney, those charters were creations of *distinct* dignities, in which the petitioner did not pretend to have any interest. He merely referred to those documents, as recording the fact that Warine de l'Isle "had had place and seat and other pre-eminences in parliament." How far however he could set up one part of those patents and deny the truth of the other parts, or whether, deriving his pedigree through the grantees, he could adduce instruments which they accepted, and not be bound by the allegations in them, no matter whether true or false, is a different question, and one in which the prudence of producing those charters to prove any part of his case was intimately involved. Another question with respect to these charters arises, which was not adverted to in the proceedings, namely, whether the imposition practised on the Crown did not render them voidable, if indeed they were not *ab initio* void.—*See note, p. 84.*

<sup>2</sup> In 1790, a case was drawn up by the Hon. Hume Campbell on the part of Mr. Atkins in relation to the barony as lord of the manor of Kingston l'Isle.

<sup>3</sup> In the Purbeck case.—*See note, p. 112.*

claim whatever can be made by the present claimant; but the patent itself affords, in my humble opinion, strong presumption that in the 22nd of Henry VI. it was not considered as law, that the issuing of a writ to any person as a lord of parliament, simply the issuing of a writ and the sitting in parliament, (if Warine de l'Isle ever did sit in parliament,) created a right to an inheritable dignity descendible to his issue; for if that had been understood to be the law of the land at that time, your lordships cannot imagine that so strange a device would have been resorted to as obtaining a patent, declaring that which was not true, for the purpose of giving an ancient dignity to the family of Talbot<sup>1</sup>.

<sup>1</sup> This part may be answered, by supposing that it was the obvious wish of the Crown to create John Talbot, a person who had no hereditary claim to any dignity, to the barony of which his mother was the eldest co-heir. If Warine de l'Isle was a peer by virtue of his writ to and sitting in parliament, the fact did not benefit John Talbot, for he was neither his heir nor co-heir, and could form no ground for allowing him the Barony of which Warine de l'Isle was possessed. Recourse was therefore had to two falsehoods; the one, that Warine de l'Isle and all his ancestors had been peers by the tenure of Kingston l'Isle; the other, that John Talbot was then seised of that manor; and upon the faith of these statements the Crown was induced to create him and all his descendants, lords of that manor, Barons de l'Isle. If then, any inference is to be drawn from a statement, which is beyond all question false, it is one in direct opposition to a principle ably and laboriously contended for in the *Reports of the Lords Committees on the Dignity of the Peerage*, namely, that baronies by tenure did not exist after the latter part of the reign of Edward the First, and not that it was not considered the law in the reign of Henry the Sixth, that a writ to and sitting in parliament created a dignity descendible to the heirs-general of the party so summoned. The patent does not say a word in contradiction of such being the law; but, whether true or false, it does expressly say that Warine de l'Isle was a baron of parliament by the tenure of a particular manor. It is worthy of remark, that when the Lords' Committee allude to this charter in their *Third Report*, with the view of preventing any inference being drawn from it in favor of the principle that the dignity of a peer of the realm at any time, subsequent to the reign of Edward the First, was attached to territorial possessions, their lordships observe, "that the extraordinary terms of the patent, however, and the falsehood by which it was attempted to be supported, seem to show that the reign of Henry the Sixth was not a time in which proceedings relating to the peerage ought to be deemed of much authority." p.202. And the Committee say, in another part of their *Report*, "probably the success which had attended the claim of Fitz-Alan encouraged

If your lordships will advert to the history of the country, and will recollect that this John Talbot was the son of the famous Earl of Shrewsbury; that he was connected with the family, then most powerful, of the Earl of Warwick, you will easily perceive why no question probably arose upon this patent at the time; for those two families, in the 22nd of Henry VI., had made themselves almost masters of this country. But it is extremely probable that there did arise some question upon the patent, for in a very short time this John Talbot was created Viscount l'Isle<sup>1</sup> by a patent, declaring that as Viscount l'Isle he should

the claim of John Talbot; and it seems also probable, that the interests of his great connections operated in his favor. He was the son of the celebrated John Talbot, created Earl of Shrewsbury in the preceding year, and then in high command in France, by Margaret his second wife, daughter of Richard Beauchamp Earl of Warwick, and thus was nearly allied to the most powerful families in the kingdom." p. 192. It might have been added, that the king styles John Talbot, the grantee, "his cousin," and when, besides these facts, the state of the country at the time is considered, no one will feel any difficulty in believing that the Crown would not, if even it had the power, controvert whatever was prescribed by such parties, whose influence, probably, either awed or bribed the officer whose duty it might have been to remonstrate and to point out the falsehood of the grantee's pretensions. If then "*proceedings relating to peerages*," at that time, "*ought not to be deemed of authority*," what weight can be attached to a mere recital in a patent, which recital is confessedly false, and which their lordships suggest was probably obtained by undue influence, in contradiction to the received doctrine, and, with very few exceptions, the uninterrupted and constant practice of ages?

<sup>1</sup> If a question did arise upon this patent, it must, as is suggested, have been with respect to its legality: and if it was not legal, it at once proves that John Talbot had no right to the precedence of the barony of which Warine de l'Isle was possessed. From this, one of these two inferences arises, either that John Talbot was not entitled to that barony because he did not possess the manor which is said to have conferred the dignity; or, which is more probable, that no such dignity was ever attached to that manor. Upon whatever grounds the patent was disputed, or the precedence of Warine de l'Isle was denied to John Talbot, supposing such points to have arisen, it in no way affects the question whether an hereditary dignity was vested in Warine de l'Isle, for to that hereditary dignity John Talbot had no pretensions. He was created Viscount de l'Isle about nine years afterwards, namely, on the 30th October 1453, and the precedence given to him was that of junior Viscount, Lord Bouchier having been created Viscount Bouchier as early as 1446.

have precedence immediately next to Viscount Bouchier, and with precedence of all barons. Perhaps it may not be known to many of your lordships that there was a doubt whether Viscounts were entitled to precedence of Barons; it was a new title created by the Crown of latter years, which was first given in the instance of Lord Beaumont, and under these circumstances. The ancestors of Lord Beaumont, for many generations, had been summoned to parliament. A question not many years ago arose with respect to that title, and then the whole descent of that family was very clearly proved; but it so happened that one of the family became Earl of Buchan, in Scotland, and he had then summons to the English parliament by the name of Earl of Buchan, and was summoned among the earls—he lost the Buchan estate in Scotland—he ceased to be an earl in Scotland by the title of Earl of Buchan, and his son was summoned only as Lord Beaumont; but his father having enjoyed a precedence as Earl of Buchan, in order to give him precedence of the other barons, he was created Viscount Beaumont, and his patent gave him express precedence of all barons; and this patent creating Viscount l'Isle was probably formed upon the precedent which had thus been made in the case of Lord Beaumont, merely for the purpose of giving him that precedence which, probably, the old barons<sup>1</sup> of the kingdom at that time disputed. The same thing happened in the case of Stafford. Charles I. created Sir William Howard, who had married the heiress of the Stafford

<sup>1</sup> It may be asked, if a writ and sitting did not create an hereditary dignity, how could there be any “*old barons* of the kingdom?” In the 23rd Hen. VI., the year after this patent was granted, thirty barons were summoned, of whom only *one*, besides Talbot, derived his dignity from a *patent*, namely, Ralph Lord Boteler of Sudley, who was created in 1441 to the title of a family of barons by writ, of which he was the sole heir. Nearly all the others inherited baronies which had been created by writs to their ancestors in the reigns of Edward the First, Second, or Third, *long previous* to the 5th Ric. II.

family, (a dignity which had been lost by attainder,) baron, and his lady baroness, of Stafford, and by the terms of the patent gave them the precedence that belonged to the old barons of Stafford. When Sir William Howard took his seat as Lord Stafford, his title to precedence was disputed, and it was referred to the consideration of a Committee of the House to see what his right of precedence was. In order to prevent any question upon that subject, Charles I. the next day created him Viscount Stafford, so as to give him the precedence, and prevent any discussion with respect to his prerogative. In looking to what passed during the reigns of James I. and Charles I., both of whom had very high notions of their prerogative, it appears that they did assume to themselves the right of conferring that rank<sup>1</sup>. It was never admitted by this House, but was disputed in several instances, particularly in the case of the Earl of Banbury, where the king also had pretended to give a precedence, but the objection was waived by the lords who were injured by it, upon the representation that the Earl of Banbury, who was then fourscore years of age, was old and childless. It is therefore extremely probable that even in the 22nd of Henry VI. this subject was matter of discussion, and that to remove all dispute upon it the king created John Talbot Viscount de l'Isle.

The effect of this patent of the 22nd of Henry the Sixth I take to be this. It denied in effect the right of John Talbot to claim this dignity as being a dignity created by writ<sup>2</sup>, and asserted a right to the dignity and title of a

<sup>1</sup> i. e. a precedence beyond that of the date of the patent of creation.

<sup>2</sup> It was not necessary for the patent to deny, and it did not deny, John Talbot's right to the dignity as being a dignity created by writ. As has been frequently observed, he had no pretensions to any hereditary dignity whatever, he not being the heir of his father, and his mother having survived him. The argument in the text is not in this part consistent. It had been proved, and was admitted, that the alle-

different description, namely, a dignity by tenure. It raises therefore a strong presumption, that in the 22nd of Henry the Sixth it was not conceived that the writ issued to Warine de l'Isle had given an hereditary dignity.

Thomas, the son of this John Talbot, died in the 10th of Edward the Fourth without issue; and it is somewhat remarkable that Thomas Talbot was killed in an affray with the Lord Berkeley of that day, in consequence of a dispute respecting the property of the Berkeley family; and a presumption arises, and an extremely strong one in my opinion, that the law was not then conceived to give a right to the issue of a person having a writ of summons to parliament, for that Elizabeth, who was the mother of Margaret the mother of John Talbot, Earl of Shrewsbury, was the only daughter of the Lord Berkeley, and that Lord Berkeley was unquestionably a peer of parliament. He is repeatedly mentioned on the Rolls of Parliament as a peer, and was one of the barons of parliament, who were selected to announce to Richard the Second his deposition. Now if it had been conceived that the writ gave a right descendible to issue, that Elizabeth was Lady Berkeley. The person who succeeded to the property of Berkeley succeeded under an entail to the family of the Earl of Warwick, in right of Elizabeth his wife. He disputed his right to the property and had litigations upon that subject; and Thomas Talbot, the son of the person who was declared by this patent to be Baron de l'Isle, was killed in an affray which arose on that

gation in the patent, that Warine de l'Isle was a baron by the tenure of Kingston-l'Isle, was false; it was admitted that John Talbot was not the heir or co-heir of Warine de l'Isle, and consequently could have had no right to any hereditary dignity of which Warine de l'Isle was possessed; and yet this statement, false as it notoriously is, is urged as evidence of a particular fact, namely, that Warine de l'Isle was not seised of an hereditary dignity. The deduction is not merely a *non sequitur*, but a *non sequitur* deduced from irrelevant premises, and premises which can scarcely be allowed to establish any thing, since they are wholly destitute of truth.

subject; but it appears, that though he claimed a part of the property, he did not claim the title of Lord Berkeley<sup>1</sup>.

Thomas, the son of John, dying without issue, the eldest daughter, Elizabeth, having married Edward Grey, he, in the 15th year of Edward the Fourth, obtained a patent, which is almost word for word similar to that of the 22nd Henry the Sixth, attributing the title to the possession of the manor of Kingston l'Isle. The pedigree under which the present claim is made, is by descent from the Elizabeth who married Edward Grey, who was created, in the 15th Edward the Fourth, Baron de l'Isle, and afterwards Viscount de l'Isle, and died in the 8th of Henry the Seventh. His

<sup>1</sup> The descent of the barony of Berkeley is perhaps one of the most difficult questions a Committee of Privileges has ever been called upon to decide; and as a claim to that dignity is now before the House, it would be improper to hazard an opinion of the result; but the assertion that the heirs of Thomas Lord Berkeley, who married Margaret Lady l'Isle, did not consider themselves entitled to the barony of Berkeley, is by no means proved. Dugdale [*Baronage*, tome i. p. 362.] expressly says, that Elizabeth, Countess of Warwick, "pretended a clear right to all the lands" of the Berkeley family, "*as also to the barony.*" The representation of that dignity devolved on co-heirs when the barony of l'Isle fell into abeyance, hence no claim, as a matter of right, could afterwards be sustained; and, as the heir of the Countess of Shrewsbury, the eldest co-heir, was possessed of a Viscountcy, he could have had no inducement to ask for the termination of the abeyance of that title if it descended to the heir-general instead of being attached to the tenure of Berkeley Castle, which went to the heir-male, about which Castle, as the learned lord has observed, a constant feud subsisted between the Berkeley and Talbot families. Certain it is, however, that in the reign of Elizabeth, the Dudleys, as heirs of Margaret Countess of Shrewsbury, considered themselves the heirs-general of the House of Berkeley, as is evident from the following passage in Sir Philip Sydney's answer to *Leicester's Commonwealth*:—"The House of Berkeley, which is affirmed to be descended lineally from a King of Denmark, but hath ever been one of the best Houses in England, and this duke [Dudley, Duke of Northumberland] was the only heir-general to that house, which the House of Berkeley doth not deny, however, as sometimes it falls out between brothers, there be question of land between them." Speaking of the duke elsewhere, Sir Philip says, "he was by right of blood, and so accepted, the ancientest Viscount in England; heir in blood and arms to the first or second Earl of England; in blood of inheritance, a Grey, a Talbot, a Beauchamp, a Berkeley, a l'Isle."—*Collins' Sydney Papers*, vol. i. p. 65. It is always a most difficult point to show what inferior dignities individuals attributed to themselves when they were possessed of one of great antiquity or great rank.



son was Viscount de l'Isle; he died in the 20th Henry the Seventh; he had only a daughter, who died without issue<sup>1</sup>, and three sisters, from whom there were several descendants. The eldest sister married Sir Arthur Plantagenet, who was created Viscount l'Isle: she had previously married Edmund Dudley, whose son, John Dudley, was created Viscount l'Isle, and was afterwards the celebrated Earl of Warwick and Duke of Northumberland. He was attainted, but his issue were afterwards restored<sup>2</sup>.

He had a very numerous issue, and perhaps some question might arise with respect to the son of one of those, the famous Earl of Leicester. But I think it is not important to enter into the discussion of that question; for if your lordships are of opinion that it is not clearly made out that the writ issued to Warine de l'Isle gave a title by hereditary descent to his descendants, then it is not very material to inquire whether that pedigree is or is not clearly and substantially made out to your satisfaction.

It is perfectly clear that until this claim, there is no instance whatever of any descendant from Warine de l'Isle claiming this peerage, as a peerage created by writ<sup>3</sup>. It was created in the Talbot family, and created in the Grey family, as a peerage by tenure, a claim which the present claimant cannot possibly make, because he has not the manor of Kingston l'Isle, and therefore his claim can only be founded, if at all, upon the writs issued to Warine de l'Isle.

<sup>1</sup> His lordship does not notice that the intended husband of the daughter of the last Viscount l'Isle was created to the same title.—See p. 12. Only one of the three sisters of the last Grey, Viscount l'Isle, left issue.

<sup>2</sup> His issue were restored in blood only, and with a special exception of right to any title of honor.—See p. 43. It has been repeatedly decided that restorations in blood do not restore a right to peerages forfeited for high treason, in proof of which, the Stafford, Beaumont, Lumley, and numerous cases might be cited:—See note to pages 93, 94, 95, for some observations on the effect of the attainder of the Duke of Northumberland.

<sup>3</sup> This objection has been frequently met by the fact, that from the 6th Ric. II. the barony has *always* been in *obeyance*.

Besides these two patents, which, in my opinion, create a strong presumption against the present claim, there are also other circumstances of the same description. The celebrated Dudley, who was first Earl of Warwick and then Duke of Northumberland, was created Viscount l'Isle; he never had the title of Baron l'Isle<sup>1</sup>. Arthur Plantagenet, the second husband of Elizabeth, the sister of John Grey, Viscount l'Isle, was also created Viscount l'Isle; Ambrose Dudley, the son of John Dudley, after the death of his father and the restoration of his family, was created Baron l'Isle and Earl of Warwick. Now he would have had exactly the same right by writ as the present claimant if he accepted a patent creating him Baron l'Isle. Dudley, Duke of Northumberland, had a daughter, Mary, who married Sir Henry Sydney. Upon the failure of male issue of the Duke of Northumberland, her descendants were created Earls of Leicester, and they were also created Barons Sydney and Viscounts l'Isle; but they did not claim the title of Baron l'Isle by descent; and yet they had exactly the same title which the present claimant has, because he claims by descent from this very person<sup>2</sup>.

When this instance is stated, and when it is also considered (which I think very important) that this Margaret the

<sup>1</sup> He was the heir-general of John Talbot and of Edward Grey, and was seised of Kingston l'Isle; hence he probably became Baron l'Isle under the patents of 22nd Hen. VI. and 15th Edw. IV., on the death of his mother, which took place about 1538. Within four years of that time, and one year after the death of his father-in-law, Arthur Viscount l'Isle, he was created Viscount l'Isle, so that there were but four years in which he could have asserted his right to the barony created by those patents, or sought the termination of the abeyance of the original barony; and it is not too much to suppose that delicacy towards his father-in-law prevented him seeking the title of l'Isle during his life-time.

<sup>2</sup> Reasons have been given for considering that the attainder of the Duke of Northumberland barred a claim to any title of honour which was derived through his grace, so that it operated against Ambrose Dudley, his sister, and all her descendants. See note to pages 93, 94, 95. Moreover, as all the parties mentioned by his lordship enjoyed a higher dignity, they had no motive for seeking this barony as a favor from the Crown, especially as they were only *co-heirs* of it.

daughter of Warine de l'Isle, who married Lord Berkeley, had issue an only daughter, Elizabeth; that Elizabeth was unquestionably entitled to the dignity of Lady Berkeley, if the law had been then understood to be that a writ of summons to parliament and a sitting in parliament created an hereditary right to a dignity descendible to issue<sup>1</sup>.

Taking all these circumstances together, I apprehend that they are sufficient to induce the House to think that at the time of the death of Warine de l'Isle, in the 6th of Richard the Second, the law was not understood to be that the issuing of a writ to any person to sit in parliament and a sitting in parliament upon that writ created a right to a descendible peerage. The first time that was ever asserted was in the case of the title of Lord Clifton<sup>2</sup>, and certainly the opinion of the Judges was taken upon that subject, it being then much questioned; and the Judges gave their opinion, that the writ to the ancestor of Lord Clifton and his sitting did create an hereditary dignity at the time that writ issued. The Judges do not appear, from any thing which remains, to have given any reasons for the opinion they expressed, at least nothing upon that subject that I can find has ever come down to our time. Whether they did

<sup>1</sup> See note, p. 271; and note 2, p. 283.

<sup>2</sup> Such also is the assertion in the *Fourth Peerage Report*, p. 73, hence it is evident that the noble lord entirely rejects the case reported by Lord Coke, which will be fully discussed in the APPENDIX. Even, however, if that case be rejected, the statement is not strictly correct; for if by the word "decision," in the *Report*, is meant the judgment of the House, many instances occurred before the Clifton case, which prove that a writ and sitting were held to create an hereditary dignity. See note 1, p. 101; and note, p. 260. Besides the decisions alluded to before 1673, there is Lord Coke's definition of the law on the point; and if, as the learned lord says, the Judges were first called upon to give their opinions in the Clifton case, it is most important to look at the manner in which those opinions were expressed. They *unanimously* agreed in the dictum of Lord Coke, and from his time to the present, such as has been uniformly held to be law, and which, to use the words of Mr. Cruise, in his *Treatise on Dignities*, "has been confirmed by so many decisions that it is not now to be shaken."

give any reasons, or whether they simply signified that opinion, offering no reasons, it is impossible now to state. That opinion unquestionably was given; and it appears that in consequence, the House resolved that the descendant of that individual had a right to the title of Lord Clifton. That was comparatively in recent times, and the present lord sits under the title derived from that resolution; but that is the first time that any such resolution was entered into by the House, and the first time that it was clearly established as a ground of claim<sup>1</sup>.

Under these circumstances, therefore, I am of opinion that it will be most prudent to hold that there has not been sufficient shown to justify you to declare that Warine de l'Isle, by virtue of the writ issued to him, gained a right to a dignity descendible to his issue, so as to entitle his issue *ad infinitum* to claim a writ as lords of parliament.

<sup>1</sup> If a writ to and sitting in parliament were for the first time made a ground of claim in 1673, upon what principle, it may be asked, was Sir Richard Fenys allowed the barony of Dacre, *temp.* Hen. VI. and Edw. IV.? or did the husband of the Baroness Talboys, daughter and heir of Lord Talboys, by writ, claim to be Baron Talboys, *temp.* Hen. VIII.? or Lady Fane claim the Barony of Le Despencer and Abergavenny in the reign of Elizabeth? or William Cecill claim the barony of Roos in 1616? or Charles Longueville claim the barony of Grey de Ruthyn in 1640? or Henry Mildmay claim the barony of Fitz Walter in 1660, or his brother and heir in 1669? all of which, excepting the claim of Mr. Talboys to be a baron *jure uxoris*, were allowed. The subsequent instances in which the right of heirs-general of barons by writ to baronies have been admitted are cited in the note to p. 104, but the principle was recognised in a most remarkable manner in the years 1694 and 1737. In 1694, on the death of Charles Boyle, eldest son of the Earl of Burlington, who was merely summoned in his father's barony (by patent) of Clifford of Lanesborough, his son and heir, (grandson and heir apparent of the said earl,) asserted his right to a writ of summons in consequence of his father having been summoned, which was allowed; and in 1737, the heir-general, at the distance of four generations, of Henry, eldest son of the Earl of Cumberland, who was summoned *visâ patris* as a baron, was allowed the barony, though there can be no question that the writs to Henry Clifford were issued by mistake, it being presumed that his father possessed the old barony of Clifford in which it was intended to summon his eldest son. The barony of Strange, created by writ in 1628, is also in point. See Cruise on Dignities, p. 225.

It is undoubted that this House has at different times not been sufficiently cautious upon this subject. Of late years more attention has been paid to it. Your lordships, perhaps, will be surprised to hear, with respect to the title under which a noble lord sits in this House, the Baron de Clifford, that when it was claimed by the Earl of Thanet, who undoubtedly was a descendant, the only evidence of that fact was the admission of the Attorney-General at the bar of the House that he was a descendant. It was not then the practice of the House even to examine the question of pedigree, but you took the certificate of the Attorney-General upon that subject as a proof of the pedigree being according to it.

I must confess that in my opinion your lordships did the same thing the other day; and I believe I was the only person, a noble earl excepted, who objected to the bills which then passed for restoring certain attainted peers, when you thought fit to allow the pedigrees stated in those acts of parliament without any proof upon the subject, but what may be called the admission of His Majesty's Attorney-General. In my opinion you ought to be far more cautious upon that subject<sup>1</sup>.

In the very claim which is now before you, the claimant derives a descent from Richard de Redvers, or Ripariis, Earl of Devon, who died in the year 1133, and from Warine Fitzgerald, whose son Warine Fitzgerald died in the 2nd of Henry the Third, leaving a brother, Henry Fitzgerald, whose only daughter, Alice, married Robert de Insula, who died in the 22nd of Edward the First, whose son Warine de Insula died in the 25th Edward the First, whose son Warine de Insula died in the 1st Edward the Third, whose son Gerard de Insula died in the 34th Edward the Third, and

<sup>1</sup> The noble lord's remarks on this subject are extremely just. The carelessness with which some of those bills were prepared was most extraordinary.

whose son Warine was named in the charter of Henry the Sixth, and who died in the 6th of Richard the Second, which brings this pedigree very clearly down to Warine de l'Isle. This appears perfectly plausible as printed in the pedigree; but the evidence that he himself has produced in support of his claim, clearly disproves the whole of that part of the pedigree which deduces the descent of Robert de Insula from the family of Redvers, and shows that there is not one word of truth in it, and the counsel at the bar acknowledged that it ought to be struck out of their case. The truth is, that they were misled; and I do not wonder at their having conceived that that was a true pedigree, because part of the evidence which is produced in support of their cause is an ancient pedigree in the family, which states all this, though unquestionably falsely.

I mention these circumstances, because I am perfectly persuaded your lordships have not in any case hitherto been sufficiently cautious upon this subject, and I am sure that you will find that it will be necessary to take more precaution than you have hitherto done. One misfortune is this, that when you have a claim laid before you, you hear counsel in support of that claim. The claimant has agents who bring forward evidence upon the subject, and you hear His Majesty's Attorney-General in objection to that; but all that he can do is to take objections to the evidence offered by the claimant. There ought to be an active person on the other side to inquire into the whole circumstances of the case, who shall sift it to the bottom, and shall find whether all the evidence brought forward by the claimant is correctly brought forward, and whether there may not be other circumstances which ought, but which are not brought forward. I do not see that in this case there is any objection on that point, for there has been, as far as we know, an honourable disclosure on the part of the present claimant;

for on one part of the pedigree, namely, the question with respect to Robert Dudley, where there was a doubt whether he was the son of the famous Earl of Leicester, they have delivered to the Attorney-General the evidence in their hands, which he had no other means of procuring, and therefore so far from supposing that in this case there is any thing of this description, I think it just to the claimant to say that every thing has been most honourably communicated; but I would submit that your lordships should in future look with great anxiety to claims of this description, the rather because I think you will find that the time of the House will probably be very much occupied with such cases, and that unless you are extremely cautious upon this subject you will be very much misled.

In this case, without entering into any discussion with respect to the pedigree under which the claimant makes his title, it does appear to me that there has not been sufficient shown, to induce you to say that the writs to Warine de l'Isle did create in him a dignity descendible to his issue according to the law, as it was then understood; and that the circumstances belonging to this case raise a strong presumption to the contrary. The two patents mentioned<sup>1</sup>; the circumstance that there was no claim for the length of time that elapsed between the death of Warine de l'Isle and the first of these patents, a period of many years<sup>2</sup>; all the time which has since elapsed until the present claim, during which no person whatever, who had a right to make the claim, if there was a right, has thought fit to bring forward a question upon the subject<sup>3</sup>; when all these circumstances are put together, you may very properly resolve, that the claimant has not sufficiently shown that by the writs issued to Warine de l'Isle a right was gained to a dignity of peerage descendible

<sup>1</sup> See notes, pages 265. 270.

<sup>2</sup> See note, p. 264.

<sup>3</sup> See note 2, p. 262.

to his heirs; and if that should be the opinion of your lordships, of course it will not be necessary to enter into any other part of this case—that will be the species of resolution I should submit to be reported to the House.

*Lord Chancellor.*—This is undoubtedly a case of considerable importance. Although I concur in the general views which the noble and learned lord has stated to the House, namely, that the right to this title is not sufficiently shown, I would suggest that the motion which he has made should stand over for a few days, that we may consider whether that be precisely the resolution to be offered; and I do it the rather, because I feel that which has been so properly urged by the noble and learned lord, that we ought to proceed with very great caution in these cases. The person who has now the honor of addressing you has most repeatedly in this House stated, that the examination of titles claimed by persons who are claiming rights to peerage, has been extremely distressing to those who have had to make that examination; the course is this, that when a petition is presented to His Majesty, it is referred to the Attorney-General; if the Attorney-General is satisfied, a writ usually issues without any more proceedings; if he is not satisfied, further inquiry takes place. In many cases the Chancellor, who issues the writ, requires authority to issue that writ, and often he most laboriously examines the subject; at the same time I am ready to admit that I know errors in matters of this sort to be quite possible, and in my opinion it will be a much more satisfactory mode of proceeding, if, on the part of the House, some additional form or process of examination is adopted. My noble and learned friend is aware of a difficulty which lately occurred in the case of an Irish peerage<sup>1</sup>, in consequence of our not having at the bar the Attorney-General for Ireland, and of

<sup>1</sup> The claim to the Earldom of Roscommon.



our having cast upon us the duty of examining into that which had been collected and returned by him, without our having sufficient information on the subject; what ought to be done under these circumstances is well deserving of the consideration of your lordships.

In the present instance, it appears to me important that we should have an opportunity of considering in what terms the resolution should be penned. I am prepared now to offer my view of this case, but I will abstain until I have had an opportunity of considering the form of the resolution to be submitted in this case, which is one of very great importance, because it ought to lay down a general doctrine, with respect to which we should be particularly careful<sup>1</sup>.

Adjourned to Monday.

<sup>1</sup> It will be seen that the resolution adopted, so far from laying down any general doctrine, did not even state the grounds on which the Committee formed its decision.

*Monday, May 22nd, 1826.*

*Lord Redesdale.*—I stated, on Thursday last, the opinion which I had formed with respect to this claim, the result of which was, that there was not sufficient ground for allowing it. The difficulty in the first place was, whether, as the law was understood at the time of the death of Warine de l'Isle, who was the last person proved to have had a summons to parliament, that summons and a sitting under it gave a right to his descendants in all future time. I thought it did not; that at that time the law was not considered as at all settled, as it was afterwards laid down in the case of Clifton, that the issuing of a writ of summons, and a sitting in the House upon that writ of summons, created a right to an hereditary peerage descendible to heirs-general<sup>1</sup>.

The circumstances that stood in the way were these:—first of all, that from the death of that Warine de l'Isle, early in the reign of Richard the Second, no person had claimed a right to sit by virtue of any peerage gained by that Warine de l'Isle to himself and his heirs<sup>2</sup>; that, on the contrary, two patents have been granted, by which descendants of that Warine de l'Isle were declared to be entitled to that dignity of Baron de l'Isle, not under the writs issued to him, but under a title of a totally different description, namely, by seisin of the manor of Kingston l'Isle; that patent at the same time declaring that the person described in it, and his heir, lords of the manor of Kingston l'Isle, should be Lords l'Isle: the consequence of which was, that the present claimant, not being possessed of the manor of

<sup>1</sup> See notes, pages 101. 260. 276.

<sup>2</sup> See note, p. 264.



Kingston l'Isle, can claim nothing under that patent; but that, on the contrary, a presumption arose from that patent, that at the time it was granted, it was not conceived that a writ and a sitting in parliament (supposing that had been made out) did constitute a right to an hereditary dignity in the person to whom that writ was issued. The second patent was of the same description, giving the dignity to the husband of a daughter of the person to whom the first patent was granted<sup>1</sup>.

It also appeared from the case before your lordships, that the lady under whom this claim was made had married Lord Berkeley. If it were true that at that time a writ and a sitting under that writ created a peerage descendible to heirs-general, this claimant had fully as good a right, or perhaps a better right, to the title of Lord Berkeley than to the title of De l'Isle<sup>2</sup>.

Under these circumstances, therefore, and considering that although in the case of Clifton the House, upon the opinion of the Judges, determined that, at the time the writ issued to Sir Gervas Clifton, the writ so issued, and a sitting in parliament upon it, constituted a right to a descendible dignity, I conceive that there is strong ground for inferring that such was not the law in the reign of Richard the Second.

Soon after the decision in the Clifton case, Lord Freschville, who was then sitting in parliament under a patent which had been granted to him, creating him Baron

<sup>1</sup> See note, page 270.

<sup>2</sup> Supposing, and which is probably the fact, that such is the case, does it afford any legal grounds for rejecting his claim to the barony of De l'Isle? Is it in the Courts below an objection to a man's title to the manor of A. that the same title would give him a claim to the manor of B.? But the petitioner was only a *co-heir* of the baronies of Berkeley, l'Isle, and Teyes, hence the Crown might bestow on him the one without creating in him a right to either of the other dignities. A statement of the case of the barony of Berkeley, which is now the subject of claim before the House, will be found in the APPENDIX.

Freschville, insisted that he was entitled to a higher precedence, because he was descended from a person of the name of Freschville, whose heir he was, to whom such a writ had been issued in the reign of Edward the First. Upon considering that case, the House did not enter into a discussion of the pedigree; but supposing the pedigree stated by the claimant to be true as he stated it, the question was, whether a writ so issued had the effect which was attributed to it by Lord Freschville; and the House resolved that it did not appear to them that there was sufficient ground to advise the King to allow the claim: that was submitted to by Lord Freschville, and it appears upon your lordships' journal. There is so strong a resemblance between that case and the present<sup>1</sup>, that I should think it a sufficient

<sup>1</sup> It is submitted that *there is not the slightest resemblance between the case of the petitioner and that of Lord Freschville*; that the decision in that case was in strict conformity with the opinion of the Judges in the Clifton case four years before; and that the argument of the Attorney-General in the Freschville claim is *strongly in favour of one part of the present claimant's case*.

On the 26th January, 25th Edward I., 1297, a writ was issued to Ralph de Freschville, commanding him, "cum aliis proceribus et magnatibus," to attend at Salisbury on Sunday, the Feast of St. Mathias the Apostle, next ensuing, "colloquium et tractatum specialiter habituri," et "consilium impensuri," which writ is marked in the margin, "De Parlamento tenendo apud Sarum." Many persons were summoned by that writ who were never summoned before or afterwards; and what is more important, no prelates or abbots were summoned on that occasion; and there is no notice either on the *Rolls of Parliament* or in the *Statutes of the Realm* of any parliament having been held at Salisbury in the 25th Edward I. The descendants of Ralph Freschville continued in the male line until 1682, and his heir, John Freschville, was, by patent 6th March, 1644, created Baron Freschville of Staveley, co. Derby, to hold to him and the heirs male of his body. In 1677, he claimed to be allowed to sit in the House in the precedence of, or in other words, claimed the barony supposed to have been created by the writ above-mentioned to, his ancestor Ralph Freschville, in the 25th Edward I., grounding his claim upon the decision in the Clifton case. The Attorney-General, Sir William Jones, in his argument before the House, urged, that a *proof of sitting was indispensable*; that *here the not repeating the summons was an evidence of not sitting*; that it had been objected that there was no evidence of any sitting till the time of Henry VIII., when Journals first began; "but it was one thing where writs of summons had been often repeated, but another where they never issued but once." The lords resolved "that

ground for your lordships to come to the same determination, namely, that there does not appear to the Committee sufficient ground to advise his Majesty to allow the claim of the petitioner. If any thing be afterwards alleged which may alter that opinion that finding leaves the question open; but I think that adopting the precedent of Lord Freschville's case would be the safest course. It is in my mind extremely doubtful whether, in early times, there was an idea that a peerage, limited to heirs-general by patent, conveyed

they did not find sufficient ground to advise His Majesty to allow the claim of the petitioner." What analogy there is between this case and that of Sir John Sidney, it is impossible to conceive, for

Gerard de l'Isle was *once* summoned to parliament, and Warine de l'Isle, his son, was *fourteen* times summoned to parliament.

Ralph Freschville received but *one* writ; and from the spiritual peers not having been summoned, it may be doubted, even if that assembly had met, whether it would have been a regular parliament.

Warine de l'Isle was summoned up to the very year in which he died; the barony then descended to his daughter and heiress, whose husband was already a peer of a much older creation: their heir was a daughter, the wife of an earl, who assumed the title of *Lord l'Isle*, and since her death, about the year 1420, the dignity has continued in abeyance, and most of the co-heirs were for a long time possessed of titles of superior dignity.

Ralph Freschville was never again summoned: his posterity continued in the male line for nearly three hundred and fifty years, and not one of them was ever possessed of any title of peerage.

There is not the slightest proof that the assembly to which Freschville was summoned ever met, and the presumption is to the contrary.

There is positive evidence that *eleven* of the fourteen parliaments to which Warine de l'Isle was summoned met, and transacted important affairs; and there is proof, of the strongest *presumptive* nature, that he was present in more than one, if not in each, of those parliaments.

If the "non-repeating the writ to Ralph Freschville was evidence of not sitting," by a parity of reasoning, the frequent and almost unbroken series of writs to Warine de l'Isle was evidence of sitting.

Gerard de l'Isle, the father of Warine, was sole heir, *jure matris*, of a baron, who undoubtedly did sit in parliament.

There is not the slightest reason to believe that any ancestor of Ralph Freschville was a peer of the realm.

In no one feature, therefore, are the cases alike; and if the Freschville case formed the ground of the decision in the l'Isle claim, it may be safely asserted that in no previous instance, in any court of judicature, was a case ever decided upon a precedent which was so dissimilar in every circumstance.

any such right as has been supposed in the case of Clifton to be conveyed by writ. There is a very strong case upon that subject, which is to this effect:—The King having created Robert Ufford Earl of Suffolk, with a limitation to heirs-general, he died, leaving only heirs female, and the king immediately granted the title of Earl of Suffolk to Michael de la Pole, reciting in the patent that Ufford had died without heirs-male<sup>1</sup>, and therefore the King considered,

<sup>1</sup> This case, which is not exactly stated in the text, had nothing to do with a claim to a dignity under a writ of summons. Robert, second Baron Ufford, was created Earl of Suffolk, “ nomen’ et honor’ comitis Suff’ de cōi assensu et consilio prelator’ comitū baronum et alior’ de consilio n̄ro in presenti p̄lia-mento n̄ro apud Westm’ die Lune, p̄x̄ post festum Scī Mathie ap̄li [3rd March, 11th Edward III. 1337] p̄x̄ preterito convocato existencium dedimus ipsamque in Comitem Suff’ p̄fecimus et gladio cinximus sicut decet ac p̄missor’ contemplacōe dedimus et concessimus p’ nob’ &c. p̄fato Rob’ti xxl. sub nōie et honore comitis Suff’, &c. h̄end’ et tenend’ sibi et h̄edib’ suis imp̄p̄m,” &c.—*Chart.* 11th Edw. III. No. 52. He was succeeded by his son and heir, William de Ufford, in 1369, who died without issue on the 14th February, 5th Ric. II., 1382, without heirs-male of his body; and Henry Lord Ferrers of Groby, Roger Lord Scales, and Robert Lord Willoughby, were found to be his nearest heirs in blood, “ heredes propinquiore de sanguine.” *Each.* 5th Ric. II., No. 57. These persons were, it appears from his will, his nephews, sons of his three sisters; and as they were the heirs of the body of Robert, the first earl, it might be inferred, from the words of the patent, that the earldom fell into abeyance between them: but it is material to observe, that even under that patent no person could claim the earldom *de jure*.

In the parliament which met at Westminster, on Friday after the Feast of St. Lucy the Virgin, 9th Ric. II., 15th December, 1385, Michael de la Pole was created Earl of Suffolk, the record of which proceeding on the Roll of that Parliament commences in these words, “ Memorand’ quod cum Willielmo nuper Comite Suff’ absque heredibus masculis, prout Altissimo placuit, ab hac luce substracto, et maxima parte sui patrimonii ad Dominum Regem hac de causa legitime devoluta, eligens potius idem Dominus Rex Dignitatem et Nomen tanti Comitatus honori Diadematis Regii continuando adicere, quam ejus suppresso Nomine ipsius patrimonii commoda usibus fiscalibus applicare, et eo pretexto ad nobilem et discretum virum Michaelē de la Pole, &c.”—*Rot. Parl.* vol. iii. p. 206. Admitting, however, that in this instance there is an inconsistency between the limitation in the patent to Robert de Ufford and the recital on the Roll as to the cause of the King’s considering that the dignity of Earl of Suffolk had absolutely reverted to the Crown, it is equally as probable that the king treated the co-heirs of the first earl with injustice, as that the word to “ his heirs ” in the patent meant only to his heirs *male*; for



that although he had left daughters, the grant of the Earldom of Suffolk reverted to the Crown, and that the title in the grant to Ufford was extinct, or that it was so extinct that nothing but the power of the Crown could call it out. Under these circumstances, it does appear to me very doubtful whether this case can be extended beyond that particular case, or how far back this sort of right may be carried, from what time it is to be considered that the issuing a writ and sitting under that writ created a descendible dignity. I must confess that it not appearing upon what ground the Judges gave that opinion in the case of Clifton, and the case of Freschville, which followed immediately after, amounting to a decision of the House, that the issuing of a writ to Ralph Freschville, the ancestor of my Lord Freschville, did not confer a dignity descendible to his heirs<sup>1</sup>, I

not only can numerous cases of dignities be cited, where the word "heirs" were clearly understood to mean heirs *general* of the body of the grantee; but there is no greater cause for supposing that such an interpretation was intended to be put on the term "heirs" in a patent of creation than in a grant of lands, freewarren, or other privilege, or in fines, &c. where the expression "heirs" and "heirs-male" often occur as distinguished from each other. In considering *anomalous* cases in the descent of dignities, the just observation of the Lords' Committees on the Dignity of a Peer of the Realm in their *Fourth Report* ought not to be forgotten. "When the confused state of public records, during many years, is considered, it cannot be matter of surprise, that many should have been lost, and indeed there can be no doubt that many have been lost; and therefore the general current of authority, demonstrating the general opinion of the law, may be considered as sufficient to overrule any doubt which might be founded on [these two] singular cases."—p. 55.

<sup>1</sup> The simple but important distinction between the cases of Clifton and Freschville was this :—The law laid down in the former was, that a writ and sitting created an hereditary barony, and writs and sittings were distinctly proved in that case: only *one* writ and *no* sitting was shown in the Freschville case. If the Judges had said that a single writ created a dignity, the Freschville might be considered to contradict the Clifton case; but, following the dictum of Lord Coke, they expressly said there must be a sitting under the writ: and as *no* sitting could be proved, or even presumed, if the House had allowed the claim of Lord Freschville, they would most decidedly have acted in *contradiction* to the opinion of the Judges and the decision of the House in the Clifton case: hence the refusal of the Freschville claim is rather a confirmation, than a contradiction, of the previous decision.

do not think your lordships ought to advise His Majesty to allow this claim. I beg, therefore, to move a resolution to report to the House that it does not appear that there is sufficient ground to advise His Majesty to allow this claim.

*Lord Chancellor.*—This is undoubtedly a case of considerable importance; and in order that we may be quite sure that the terms in which the determination is made are the most correct which can be adopted, I would beg leave to move, that we proceed in the further consideration of this case on Thursday next.

*Lord Redesdale.*—I should much wish this should be very well considered, because if your lordships will take the trouble of looking into two Reports which have been made with respect to the peerage, one in July 1819 and the other in July 1822, it appears from them, that the House has in several instances come to resolutions evidently without sufficient knowledge of the facts and circumstances of the case. There is one very remarkable instance. In the year 1626, the House came to a resolution that the baronies of Bolbec, Sandford and Badlesmere, were in abeyance between the heirs-general of John Earl of Oxford<sup>1</sup>. Now there was not, as far as appears, the slightest evidence before the House upon the subject; and there was no ground whatsoever for such a resolution: that must have been done without any proper consideration, merely because the Judges

<sup>1</sup> See an elaborate report of this case in *Collins's Precedents*, p. 173 *et seq.* Adopting the opinion of the Judges, the House declared that those baronies were "in His Majesty's disposition." Neither Bulbeck nor Sandford were baronies by writ or patent, and the Earls of Oxford were only co-heirs of the barony of Badlesmere. The opinion of the Judges in that case admitted of the inference that they considered that a barony which did not originate in a patent descended to the heirs-general; and that if there were more than one heir-general, it "returned to the Crown in the strict construction of the law," but that the Crown might "dispense" with its claim, and even allow the dignity to the heir male. *Ibid.* p. 180.



had said, that because there were such titles, those titles must be in abeyance between the general heirs of John Earl of Oxford. If your lordships will pay attention to the Journals of the House, you will find, that on that and many other occasions the House has proceeded without that care and attention that is generally now bestowed upon those subjects. Even in respect of the title of Lord Clifton, the House took the admission of the Attorney-General at the bar, that the pedigree was as stated by the claimant, without entering into any evidence whatever upon the subject.

Adjourned to Thursday.

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*Thursday, May 25th, 1826.*

*Lord Chancellor.*—In this case, I do not feel it to be necessary to trouble your lordships further than to state, that it appears to me the resolution proposed on a former day is right: to that resolution, as it is drawn out, stating that the Committee do not feel that the claimant has laid before them sufficient evidence to authorize them in advising His Majesty to allow the claim, I am ready to give my assent.

*Lord Redesdale.*—The resolution is the same which the House adopted on the claim of Lord Freschville: it came there to a resolution, that it did not appear that there was sufficient ground to advise His Majesty to allow the claim of the petitioner. In that case the pedigree was not tendered at all, that is, the statement of the Attorney-General was allowed to be sufficient ground for them to consider the first question; which was, whether there was or was not a title to an hereditary peerage created by the issuing

of a writ to a person of the name of Ralph Freschville. In this case, the first thing to be established is, that there was an hereditary peerage created, descendible to the issue of Warine de l'Isle. If you are of opinion that that is not sufficiently established, then it is immaterial, and you ought not to be called upon to consider, whether the person who makes the claim is or is not the person he represents himself to be.

*Lord Chancellor.*—I apprehend the rule of the House is this, that unless the title to the dignity is made out, you have nothing to do with the pedigree. If you are of opinion that the title to the dignity is sufficiently made out, provided there is any body to claim it, then you enter into the pedigree, and form your judgment upon it; but do not go into the pedigree, if there is any doubt upon the dignity, therefore not meaning to throw any doubt upon the pedigree, and leaving it quite open to further inquiry whether a descendible peerage can be shown to exist, I am perfectly ready to concur in the resolution.

It was then moved to resolve, “ That there does not appear to the Committee sufficient ground to advise His Majesty to allow the claim of the petitioner,” which, being put, passed in the AFFIRMATIVE, and the chairman was directed to report this resolution to the House.

The Resolution was subsequently reported to the House, when it was resolved “ that there did not appear to be sufficient ground to advise His Majesty to allow the claim of the Petitioner,” which Resolution was ordered to be laid before His Majesty.

After the resolution of the House on this claim, a Case was laid before Mr. Hart and Mr. Shadwell, two of the Counsel for the claimant, stating the proceedings before the Committee, the various documents which had been produced, and Lord Redesdale's address to the House, and concluding with the following remarks:—

“ THIS decision, and the ground assigned for it, were a surprise, as well as a disappointment, to Sir John Shelley Sidney; for in no previous case had it been held, or even argued, that the effect of a writ of summons and sitting, in early times, was different from the effect which decisions had given to them at a later period. The whole current of authority was, indeed, the other way. In the *Botetourt Case*<sup>1</sup>, which had been much referred to in the argument of this case, there was no summons later than 9th Richard II.; yet the House allowed the claim in that case; and upon what principle it is that a series of summons, extending down to the 9th Richard II., is to have the effect of conferring an hereditary dignity, but that one which happens to stop at the 5th Richard II. is not to have that effect, Lord Redesdale did not tell the Committee.

The main stress of the Attorney-General's argument before the Committee was laid upon the point, that there was no sufficient proof from the Rolls of Parliament that Warine de l'Isle ever sat in parliament. ‘In order to establish a sitting,’ said the Attorney-General, ‘it has been over and over again decided that a sitting must be evidenced by the Rolls of Parliament. We must see in the proceedings of

<sup>1</sup> “ Stated in ‘Cruise on Dignities,’ p. 188.” See also the APPENDIX.

parliament itself, the name of the individual who is stated to have so sat ;' and Lord Redesdale was pleased to observe, that there was no evidence sufficient to show to their lordships that Warine de l'Isle ever took his seat in parliament. For this too, Sir John Sidney was little prepared, after the statement in Mr. Attorney-General's<sup>1</sup> report, that the evidence laid before him, and which was repeated before the Committee, did appear to Mr. Attorney-General to prove that, in point of fact, Warine de l'Isle sat in pursuance of the summonses issued to him. This, however, is immaterial, if the law really be, as now promulgated by Lord Redesdale, that summons and sitting, at the period in question, did not ennoble the person so summoned and sitting, and his descendants.

That Warine de l'Isle was participant of the rank and dignity of nobility, no man who refers to the continued series of summons to parliament which were issued to him; to the names of the persons along with whom he was so summoned; and to the allegations of the charters of Henry VI. and Edward IV., can reasonably doubt. At the coronation of Richard II. 'Gerard, son of Warine de l'Isle,' was one amongst the young nobility knighted by the king<sup>2</sup>; and Dugdale relates<sup>3</sup>, that soon after the death of this Gerard, his father, Warine de l'Isle, went to Berkeley Castle, the house of Thomas de Berkeley his son-in-law, and made it his residence in his latter days; and that Thomas de Berkeley, having the prospect of so fair an estate, covenanted with Warine de l'Isle, that he, and the issue which he should beget on his daughter, would, after his death, always use and bear the arms of the said Lord l'Isle.

Lord Redesdale also drew an inference against the claim, from the fact 'that from the 6th Richard II. to the 22nd

<sup>1</sup> Sir Robert Gifford.

<sup>2</sup> "Dugdale's Baronage, vol. i. p. 360."

<sup>3</sup> "Rymer's Fœdera, vol. vi. p. 159."

Henry VI. was a period of fifty years, and during that time no claim was made of the dignity of Baron de l'Isle, either by descent of Warine de l'Isle, by virtue of the writ, or by any title derived from the manor of Kingston l'Isle.' Warine de l'Isle, however, left an only daughter, Margaret, married, in her father's lifetime, to Thomas de Berkeley, who (as Lord Redesdale elsewhere observes) was a baron and lord of parliament in his own right, and a nobleman of great power and consequence. It was improbable that Thomas de Berkeley would concern himself about a title inferior to what he already possessed, especially seeing that the law as to enjoyment by a husband of his wife's dignity was then in a very unsettled state<sup>1</sup>. Lady Berkeley left an only daughter, Elizabeth, married to Richard Beauchamp Earl of Warwick, her heiress at law; here again the barony in question was overshadowed in a higher dignity; and upon the death of that lady in 4th Henry V. it fell into the state of abeyance, which Sir John Sidney seeks to have terminated. We submit, that the fair inference from non-claim, under these circumstances, between the death of Warine de l'Isle and the 22nd Henry VI., is, that the parties in whom the right resided had no sufficient inducement to prefer their claim; but can any man doubt, that if that son of Warine de l'Isle, who was knighted with the eldest sons of other noble families at Richard the Second's coronation, had survived his father, *he* would have received summons to parliament in his father's place?

Lord Redesdale is pleased to assume, that the person who prepared the patent of 22nd Henry VI. would not have resorted to the 'strange device,' as his lordship terms it, of stating that which was untrue in a patent, for the purpose of founding a title to an hereditary dignity, if they could have

<sup>1</sup> " Hargrave, Co. Litt. 29 C., note 1."

founded the right to such a dignity upon the summons and sitting of Warine de l'Isle ; but it ought in fairness to have been observed, that there was another task to accomplish on that occasion besides making out the existence of an ancient dignity, viz. to show a claim to the dignity in one only of a multiplicity of co-heirs. The doctrine as to the determination of the abeyance of dignities, now well established, was then unsettled, if broached at all ; and the supposition that the parties concerned in preparing that patent resorted to the device in question for the purpose of escaping this difficulty, is at least as probable as Lord Redesdale's assumption that they resorted to it for the purpose of setting up the dignity.

Again, Lord Redesdale refers the creation of John Talbot to be Viscount l'Isle to suspicions of the infirmity of his title to the barony : but is it not more probable that his brilliant services in France were the cause of his advancement to that dignity of viscount, ' with precedence of all barons ?'

Lord Redesdale says, that ' the celebrated Dudley, who was first Earl of Warwick and then Duke of Northumberland, was created Viscount l'Isle : he never had the title of Baron l'Isle.' But this surely goes for little, if the history of John Dudley's life is adverted to. His father had been sacrificed by Henry the Eighth to popular clamour at the commencement of his reign, and that monarch seems to have heaped favours upon the son, in recompense for the injustice done to his father. But the doctrine as to terminating the abeyance of dignities was still unsettled. The man who could obtain a higher dignity by grant would scarcely pursue a doubtful claim of right, more especially when it is considered that in these days the Crown seldom granted a dignity to the subject without conferring also

some substantial grant for its support. The same observations apply to the subsequent revival of the dignity of Viscount l'Isle in the Sidney line.

It will be observed that the resolution of the Committee does not import any conclusion against the claim, but only that sufficient grounds have not been shown to induce the Committee to advise His Majesty to allow the claim; thus leaving it open to proceed further upon the present reference, if additional grounds either of law or fact can be presented to the Committee, and Sir John Shelley Sidney is desirous of being advised by counsel—

Whether, in reference to the points to which we have above drawn your attention, he can bring the case again before the Committee with a reasonable expectation of success?

#### OPINION.

We are of opinion that Sir John Sidney may bring the case again before the Committee with a prospect of success. Whether, under the circumstances, he should do so immediately, is a subject for his discretion rather than of legal advice. It was incumbent on Sir John Sidney to establish by sufficient evidence that he was descended from Warine de l'Isle in the manner stated in the pedigree; next, that Warine de l'Isle had received the king's writ of summons to parliament, and had taken his seat as a lord of parliament in obedience to the writ; and lastly, that, according to the law and usage of parliament, a person sitting in parliament under a writ of summons was ennobled, and acquired the dignity of a baron of the realm, descendible to his heirs-general.

The pedigree was proved beyond controversy. The Attorney-General admitted that, by the law and usage of parliament, summons and sitting gave a descendible dignity, and he rested his objection on the question, whether Warine de l'Isle had taken his seat as a lord of parliament under the

writs of summons, insisting that Sir John Sidney had not produced competent evidence to establish that fact. The case being brought to this issue, we fully expected that their lordships would have decided that Sir John Sidney had made out his case; but a noble lord in his place raised a distinction as to the law and usage of parliament, which the Attorney-General had not adverted to, namely, whether the writs of summons and sitting in parliament under them, prior to the 5th year of Richard the Second, came within the rule established by the precedents. His lordship argued the point very much in detail, and in consequence the Committee came to the resolution rather as an adjournment of the claim than as a decision against it. We do not think the distinction so raised by the noble lord founded on any sound principle; and we think it at variance with the precedents on the journals of their lordships' House. It is on these grounds, that we conceive Sir John Sidney may again bring the subject before the Committee with prospect of success.

ANTHONY HART,  
LANCELOT SHADWELL.

*Lincoln's-Inn, April 13, 1827."*



## **APPENDIX.**



## APPENDIX.

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### No. 1.

#### THE ABERGAVENNY CASE.

[Referred to in page 207.]

As the opinion of the Judges in the Abergavenny case, reported by Lord Coke in his Twelfth Report, appears to have been the ground on which he founded his *dictum*, that a writ of summons to, and sitting in, Parliament created an hereditary dignity to the heirs of the body of the person so summoned, it is important to inquire how far the suspicion expressed by Lord Redesdale,\* of the accuracy of that Report is just, more especially as strong doubts on the point were entertained by the Lords' Committees, who were appointed to Report on the Dignity of a Peer of the Realm.

The following is a verbatim copy of the Report in question: the period when the point was agitated was clearly, from the context, the 8th Jac. I. anno 1610.

#### “THE LORD OF ABERGAVENNEY’S CASE.

“In the parliament a question was made by the Lord of Northampton, Lord Privy Seal, in the Upper House of Parliament, that one Edward Nevill, the father of Edward Nevill, Lord of Abergavenny, which now is, in the 2nd and 3rd of Queen Mary, was called by writs to parliament, and died before the parliament. If he was a

\* See pages 207, 208.

baron or no, and so ought to be named, was the question : and it was resolved by the Lord Chancellor, the two Chief Justices, Chief Baron, and divers other Justices there present, that the direction and delivery of the writ did not make a baron or noble, until he did come unto parliament and there sit, according to the commandment of the writ ; for until that, the writ did not take its effect ; and the words of the writ were well penned, which are : *Rex et Regina, &c. Edwardo Nevil de Abergaveney Chivalier, Quia de advisamento et assensu concilii nostri pro quibusdam arduis et urgentibus negotiis statum et defensionem regni nostri Angliæ concernentibus, quoddam Parliamentum nostrum apud Westmonasterium 21 die Octobris proximo futuro teneri ordinavimus, et ibidem vobiscum, &c.* And in the 35th H. 6, 46, and other books, he is called a peer of parliament, the which he cannot be until he sit in parliament, and he cannot be of the parliament until the parliament begin ; and forasmuch as he hath been made a peer of parliament by writ, (by which implicitly he is a baron,) the writ hath not its operation and effect until he sit in parliament, there to consult with the king and the other nobles of the realm ; which command of the king by his supersedeas may be countermanded, or the said Edward Nevil might have excused himself to the king, or he might have waved it, and submitted himself to his fine ; as one who is distrained to be a knight, or one learned in the law is called to be a serjeant, the writ cannot make him a knight or a serjeant. And when one is called by writ to parliament, the order is, that he be apparelled in his parliament robes, and his writ is openly read in the Upper House, and he is brought into his place by two lords of parliament, and then he is adjudged in law, ‘*inter pares regni,*’ that is to say, ‘*ut cum solim Senatores e censu eligebantur, sic Barones apud nos habiti fuerint, qui per integram Baroniam terras suas tenebant, sive 13 feoda militum, et tertiam partem unius feodi militis, quolibet feodo computato ad £20, quæ faciunt 400 marcas denarii, erat valentia unius Baronie integræ, et qui terras et redditus ad hanc valentia habuerint, ad Parliamentum summoneri solebant.*’ So that by this it appears, that every one who hath an entire barony may have of right, and of course, a writ to be summoned to parliament, for without writ none can sit in parliament : and with this agree our books, for

una voce they agree, that none can sit in parliament as peer of the realm, without matter of record, and if issue be taken, whether a baron or no baron, earl or no earl, this shall not be tried per pais, but by the record by which it appears that he was a peer of parliament, for without matter of record, he cannot be a peer of parliament. 35th Hen. VI. 46, 48; Edw. III. 30 b. 48; Ass. pl. 6. 22; Ass. pl. 24; Register, 287. Henricus tertius, post magnas perturbationes et enormes exactiones inter ipsum Regem, Simonem de Monteforti, et alios Barones, motas et susceptas, statuit et ordinavit, quod omnes illi Comites et Barones regni Angliæ, quibus ipse Rex dignatus est brevia summonitionis dirigere, venirent ad Parliamentum, et non alii, nisi forte Dominus Rex alia illa brevia eis dirigere voluisset; which act or statute continues in force to this day, so that now none, although that he hath an entire barony, can have a writ of summons to parliament without the king's warrant, under the Privy Seal at least. But if the king create any baron by letters-patent under the Great Seal to him and to his heirs, or to him and to his heirs of his body, or for life, &c., there he is a nobleman presently; for so he is expressly created by letters-patent of the king, which cannot be countermanded: and he ought to have a writ of summons to parliament of right and of course, and he shall be tried by his peers, if he shall be arraigned before any parliament, but so shall not he who is called by writ, until he sits in parliament, which is the diversity.

"Richard the Second created John Beauchamp, of Holt, Baron of Kidderminster, by letters-patent, dated 10th October, 11th year of his reign, where all others before him were created by writ."

Upon this statement the following note occurs in the *First General Report of the Lords' Committees on the Dignity of a Peer of the Realm*, p. 482.

"With reference to this subject it may be important to call the attention of the House again to what is called the Lord Aberga-venny's case, in the twelfth volume of Sir Edward Coke's Reports, p. 70, and there entered as occurring in Trinity Term, 8th James I.; as that Report, if not corrected, may lead to great error.

"The writ in the Register, referred to by Sir Edward Coke, clearly applies to a person who had been *summoned* to parliament; but it may be doubtful whether it imports that person so summoned had taken his seat in parliament prior to the issue of the writ; and on the contrary, from its nature, it ought to have been applicable to a person summoned, to enable him to obey the summons; and the writ expressly applies to him what ought to be done '*versus dominos magnates comites sive barones regni Angliæ qui ad Parliamentum Regis de summonitione Regis venire debunt.*' It therefore seems to refer to the King's command, and to the privilege due to him in whose favour the writ issues, in common with other earls and barons, to enable him to obey the King's command.

"Sir Edward Coke's Report adds, '*Henricus tertius, post magnas perturbationes, et enormes exactiones, inter ipsum Regem, Simonem de Monteforte, et alios Barones, motas et susceptas, statuit et ordinavit, quod omnes illi Comites et Barones regni Angliæ quibus ipse Rex dignatus est brevia summonitionis dirigere venirent ad Parliamentum, et non alii; nisi forte Dominus Rex alia illa brevia eis dirigere voluisset; which act or statute continues in force to this day, so that now none, although he hath an entire barony, can have a writ of summons to parliament without the King's warrant, under the Privy Seal at least.*'

"Sir Edward Coke does not state his authority for asserting the existence of the law which he thus represents as made by Henry the Third. The Committee have observed, in p. 292 of this Report, that of such a law, elsewhere asserted, they had found no evidence, though it may be inferred, from various documents, that Edward the First, and his successors, acted upon the supposition that they had some discretionary power on this subject, but of far less extent than would have been warranted by such a law, which would have enabled the King to have formed the common council of the realm of such persons only as he might think proper, if the law contained no other provision.

"Sir Edward Coke proceeds to state, that 'if the king creates any baron by letters-patent under the Great Seal, to him and his heirs, or to him and to his heirs of his body, or for life, &c. then he is

a nobleman presently. For so he is expressly created by letters-patent of the king, which cannot be countermanded; and he ought to have a writ of summons to parliament of right and of course, and he shall be tried by his peers, if he shall be arraigned before any parliament. But so shall not he be who is called by writ, until he sits in parliament, which is the diversity.'

"Independent of any observations which may be made with respect to other inaccuracies in Sir Edward Coke's statement, it may be doubted whether *all* which he has so stated as resolved by the Lord Chancellor, Chief Justices, Chief Baron, and other Judges, received their sanction. They may have resolved simply, that sitting in parliament under the authority of a writ of summons was essential to the creation of a peer by writ. But it is evident that there is great inaccuracy in the statement of facts thus made by Sir Edward Coke, and there seems to be difficulty in forming a conjecture under what circumstances the question stated by Sir Edward Coke could have been put to the Judges in the 8th of James the First. Sir Edward describes the person to whom the writ in question had been directed as Edward Neville, father of Edward Neville, then (that is, in the 8th of James the First) Lord Abergavenny; and that the writ in question issued in the 2nd and 3rd of Queen Mary. It appears, from unquestionable evidence, that Edward Neville, first Lord Bergavenny of the name of Neville, was summoned to parliament frequently in the reign of Henry the Sixth, and sat in parliament in that reign, and in the reign of Edward the Fourth. His son George Neville, the second lord of that family, was summoned and sat in like manner after the death of his father, and was succeeded by his son George, third lord, who was summoned and sat in like manner, and died in the 27th of Henry the Eighth, leaving Henry his son and heir, the fourth lord, who was also summoned and continually sat in parliament till he died, in the 29th of Elizabeth, leaving Mary Fane, his daughter and sole heir, who claimed the title of Bergavenny, and leaving his cousin Edward Neville, the heir male of the family, who also claimed the title of Bergavenny, but died in the 31st of Elizabeth. In the 2nd of James the First, Edward Neville, son of Edward who died in the 31st of Elizabeth, was

summoned, in consequence of what then passed in the House on the subject of these claims. On the 7th of May, in the 8th of James the First, a Bill was brought into the House of Lords, entitled An Act for settling Part of the Possessions of Edward Neville Lord Bergavenny according to an Act of Parliament made in the 2nd and 3rd years of the reign of the late King Philip and Queen Mary, and of certain letters-patent newly made thereof by his Majesty, to the said Edward Neville Lord Bergavenny; and on the 7th of May a Bill was brought in to enable Edward Neville Lord Bergavenny, and Sir Henry Neville his son, to alien certain lands for payment of their debts, and advancement of their daughters and younger sons. On the 14th of June following, these bills were specially reported to the House; and it was stated that the first bill had been brought into the House on the application of Lady le Despenser. It is possible that in the course of these proceedings on these bills, or in the course of the proceedings under the order of the 14th of June respecting entries on the Journals, mentioned in this Report, some objections may have been made to some assumption of a name of dignity without sufficient warrant, and the Committee may have consulted the learned persons mentioned by Sir Edward Coke on the subject; but there is no trace in the Journals of any opinion given by those learned persons, or of any question put to them by the House, or by a Committee, respecting those bills, or in the course of the disputes between the Lord Bergavenny and Lady le Despenser, which occupied the attention of the House, and lasted till nearly the close of the session; and the facts before stated with respect to the succession to the dignity from the reign of Henry the Sixth seem to show, that all the persons summoned as Lords Bergavenny actually sat in the House in obedience to the writs issued to them; and that therefore the question, whether sitting in parliament was necessary to the creation of a peer by writ could not have arisen with respect to the dignity of Bergavenny.

“ But there seems to be much inaccuracy in the whole of Sir Edward Coke's Report, so far as it purports to contain a statement of facts.

• “ The writ which he represents as issued to Edward Neville, the father of that Edward who was Lord Abergavenny in the 8th of



James the First, is stated verbatim in the Report, and is there expressed to have been directed 'Edwardo Nevil de Abergavenny Chevalier:' whereas in the 1st of Mary, and in the 1st and 2nd, and 2nd and 3rd of Philip and Mary, and afterwards until the 29th of Elizabeth, Henry Nevill Lord Bergavenny was constantly summoned by writs directed 'Henrico Nevill de Bergavenny,' and not 'de Abergavenny.'

"It appears by the Journal, that the parliament of the 2nd and 3rd of Philip and Mary did begin on the 21st of October, as expressed in the writ set forth by Sir Edward Coke. On searching the Record, no writ appears to have been addressed to any person by the name of 'Edward Neville de Abergavenny' for that parliament; but there is a writ directed to Henry Neville de Bergavenny, returnable on the 21st of October, the return stated by Sir Edward Coke. It also appears on the Journal, that on the 21st day of October, the proxy of Henry, there styled 'Dominus Abergavenny,' was delivered. In the same session of parliament the act mentioned in this Report, for restitution of the heirs of Sir Edward Neville, Knight, was passed, in which act Henry was styled Lord Abergavenny; and he appears to have been then, and long before, summoned to parliament by writs directed to him as Henry Lord Bergavenny, according to the Rolls, and according to the Memoranda of the writs entered in the Journals. But no writ directed 'Edwardo Nevill de Abergavenny,' issued in any year of the reign of Mary, or in any prior or subsequent reign, appears on Record, except the writs issued to Edward, great grandfather of Henry, in the reigns of Henry the Sixth and his successors, during the life of that Edward, and the writ issued in the 2nd of James the First to Edward, who then claimed and was allowed the title, as stated in this Report. No writ, therefore, corresponding in teste and return with the writ stated by Sir Edward Coke, and directed to any person by the appellation of *Edward Nevill de Abergavenny*, can have been produced to the lords, though the writ directed to *Henry Nevill*, in the 2nd of Philip and Mary, may have been produced; but in that case Sir Edward Coke, or some person whom he employed, must have by mistake inserted the word 'Edwardo' instead of the word 'Henrico,' and the word 'Aberga-

venny,' instead of 'Bergavenny,' in transcribing the writs so produced.

"The reasoning of Sir Edward Coke, also, cannot apply to the case of Henry Lord Bergavenny, who was the son of George Neville Lord Bergavenny, son of George Neville Lord Bergavenny, son of Edward Neville Lord Bergavenny, summoned to parliament in the 29th of Henry the Sixth; for Henry Lord Bergavenny, in the 2nd and 3rd of Philip and Mary, claimed by descent, under the writ issued to his great grandfather, Edward Neville, the first of that family so summoned; and therefore was entitled, prescriptively, to a writ of summons, supposing the first writ issued to Edward Neville in the reign of Henry the Sixth, operated as a creation, in consequence of his sitting in parliament in obedience to that writ.

"The reference to a passage in the book called 'Modus tenendi Parliamentum,' now considered as a forgery, with respect to barons by tenure, and the observation upon it by Sir Edward, that it thereby appears that every person who hath an entire barony may have of right and of course a writ to be summoned to parliament, are inconsistent with his reference to the supposed law of Henry the Third, which, if any such law was ever made, must have put an end to any right in any person who had an entire barony to demand, of right and of course, a writ to be summoned to parliament. These contradictory expressions in Sir Edward Coke's Report of the Lord Abergavenny's case, in the 8th of James the First, are the more remarkable, as the disputes between Mary Fane and Edward Neville touching the dignity of Lord Bergavenny had been so recently terminated by proceedings not reconcileable with any principle, and which, even in the 8th of James the First, appear to have created great agitation amongst the peers; and the decision with respect to the precedence of le Despenser was inconsistent with the supposition that the then Lord Abergavenny was a baron by tenure, in which right he must have been entitled to precedence of the dignity of le Despenser, which could only have been claimed by Mary Fane, as a dignity created by writ in the 49th of Henry the Third.

"The accuracy of Sir Edward Coke in some of his reports and treatises has been frequently questioned by high authority, especially by the Lord Chief Justice Vaughan, in observations in Calvin's

case, in the argument on the Lord Purbeck's case, reported in Shower's Cases in Parliament, p. 3, and by Prynne in different works, and particularly in his *Animadversions on the Fourth Institute*; and in the dedication of that work to the Lord Keeper Bridgman, Prynne represents himself as encouraged by the Lord Keeper to undertake and publish it, as not only useful, but necessary, in sundry respects, to rectify the manifold misquotations and mistakes the Fourth Institute.

"The authority of Sir Edward Coke has been generally so highly esteemed, that unqualified submission has too often been paid to it, and has in some instances tended to great error. It is not extraordinary that in the course of his voluminous works he should have fallen into error, as he must often have trusted to the accuracy of others, and could not have had leisure to examine the numerous original documents, to which he has referred; and he was therefore probably often compelled to rely on extracts, or imperfect copies; but it is necessary to guard against implicit confidence in his accuracy."—*Lords' Report*, 482—486.

The Report of Sir Edward Coke is undoubtedly open to some of the objections there stated, since, even if a writ did issue to *Edward Nevill* as Lord Abergavenny, in the 2nd and 3rd Ph. & Mary, it is certain that he did not die before that parliament met; but so far as the declaration of what the Judges considered was the law on the subject of baronies is in question, the inaccuracies alluded to are of no importance, if it can be established that in *any case* those personages pronounced the opinion which Lord Coke has attributed to them. To suppose that he would *invent* such a statement; that he would name the party who agitated the question, as well as the office which he filled; and identify the Chancellor<sup>1</sup>, the two Chief Justices, one of whom was himself<sup>2</sup>, and the Chief Baron<sup>3</sup>, as part of the Judges who were present on the occasion, would be to impute to that great Judge the publication of a deliberate and gratuitous falsehood. This consideration might have obtained greater respect

<sup>1</sup> Thomas Egerton, Lord Ellesmere.

<sup>2</sup> Sir Thomas Fleming, Chief Justice of the King's Bench, and Sir Edward Coke, Chief Justice of the Common Pleas.

<sup>3</sup> Lawrence Tanfield.

for his statement than was shown to it by the Lords' Committees, or by the learned Lord who adverted to it in the l'Isle claim; more particularly as the former admit the possibility that in the proceedings on the bills brought in, in the 8th Jac. I., to enable Lord Abergavenny to alienate certain lands, "some objections may have been made to some assumption of a name of dignity without sufficient warrant, and the Committee may have consulted the learned persons mentioned by Sir Edward Coke;" but their lordships add, "that there is no trace in the Journals of any opinion given by those learned persons, or of any question put to them by the House or by a Committee." The result of a search in the *Lords' Journals* has proved, however, that the Lords' Committees are as fallible as they consider Lord Coke to have been; for it appears that a question was raised in the 8th Jac. I., as to the proper title of Lord Abergavenny's father.

On Thursday 28th June, 8 Jac. I. 1610, the amendments to a Bill which had been previously brought into the House of Lords, entitled "An Act for enabling Edward Nevill, Lord Bergevenny and Sir Henry Nevill, his eldest son, to alien certain lands," &c. "were twice read and allowed; and thereupon the bill, with the same amendments," was appointed to be engrossed<sup>1</sup>. On Saturday the 30th June, "the Lord Chancellor declared that in the Bill for enabling the Lord Bergevenny, and Sir Henry Nevill his son, to alien certain lands, are some small errors: *videlicet*, '[the said county of Norfolk]' whereas that county was not before named in the Act: also a mistaking, as is conceived, in the title or addition given to the Lord Bergevenny's father; whereupon it was agreed that the said Bill shall be recommitted to the same Committees to meet thereupon on Monday the 2nd of July, at two of the clock in the afternoon, in the Council Chamber at Whitehall<sup>2</sup>."

On Tuesday the 3rd of July, that Bill "was brought into the House by the Lord Archbishop of York, first of the Committee, with certain amendments upon the review or recommitment, which were presently twice read, and ordered to be forthwith accordingly altered and inserted in the Bill<sup>3</sup>," which was then read a third time:<sup>4</sup> on Tuesday the 17th July, it was returned from the Com-

<sup>1</sup> *Lords' Journals*, vol. ii. p. 629.

<sup>2</sup> *Ibid.* p. 631.

<sup>3</sup> *Ibid.* p. 634.

<sup>4</sup> *Ibid.*

mons'; and the amendments made by the Lower House were twice read and appointed to be engrossed in the body of the said Bill<sup>1</sup>. It was read a third time on the next day and "expedited<sup>2</sup>."

A reference has been made to the Parliament Office with the hope of finding the draft of the Bill with the amendments, but without success.

Thus, to the great probability, amounting from the internal evidence in Lord Coke's Report almost to a certainty, that a question about the proper title of the then Lord Abergavenny's father was agitated in parliament in the 8th Jac. I., there is proof of the fact, which agrees exactly in time as well as in some other circumstances with that statement; for it appears that the Earl of Northampton, the Lord Privy Seal, was one of the Committee to which Lord Abergavenny's Bill was referred<sup>3</sup>, and Lord Coke's words are: "in the parliament a question was made by the *Lord of Northampton, Lord Privy Seal*." That the case mentioned in the Journals was that to which Sir Edward Coke alluded is also shown by the manner in which the Report is worded, "if he was a baron or no and *so ought to be named* was the question;" and the entry on the Journals is, there being "*a mistaking, as is conceived, in the title or addition given to the Lord Bergevenny's father*." It is however impossible to explain how Edward Nevill, the father of Lord Abergavenny, could be supposed to have been the person summoned by the writ of the 2nd and 3rd Ph. & Mary, because the *Henry* Lord Abergavenny then summoned had been summoned from the 5th Edw. VI. to the 28th Eliz., in which year he died; or why the said Edward Nevill was considered to have died before the 21st October, 2nd and 3rd Ph. & Mary, 1555, as he lived until the 10th February, 31st Eliz. 1589. The only way of accounting for the circumstance is, by supposing that Edward Nevill was once summoned between the 28th Eliz., when the preceding Lord Abergavenny died, and his own death in the 31st Eliz.; and that Lord Coke, or his copiest, accidentally transcribed and printed the writ of the 2nd and 3rd Ph. and Mary to Henry Nevill, for the one which is presumed to

<sup>1</sup> *Lords' Journals*, vol. ii. p. 648.

<sup>2</sup> *Ibid.* 649.

<sup>3</sup> *Ibid.* 646.

<sup>4</sup> *Ibid.* p. 695. 625.

have been issued between the 28th and 31st Eliz. to Edward Nevill, under the idea that he had succeeded to the Barony of Abergavenny as heir male of the last lord, to which dignity he appears to have asserted his claim<sup>1</sup>.

According to Dugdale's *Summons of the Nobility*, the last time Henry Nevill Lord Abergavenny was summoned, was to the parliament which met at Westminster on the 15th October, 28th Eliz. 1586; and the last time the Journals state that he attended, was on the 15th November following: he died in February, 1586-7, when his cousin, Edward Nevill, above mentioned, became his heir male. The parliament which met in October, 28th Eliz. was prorogued on the 2nd of December to the 15th February, 29th Eliz. 1587, and was dissolved on the 23rd of March in the same year. Another parliament was summoned to meet on the 12th November, 30th Eliz. 1588, by writs tested on the 5th October preceding, but was prorogued to the 4th February, 31st Eliz. 1589, when it met accordingly. As Edward Nevill died on the 8th or 10th of February, 1589, if the conjecture is correct that he was summoned by writ tested on the 5th of October, it would agree very nearly with that part of Lord Coke's statement, in which he says he died before the parliament to which he was summoned met; for it assembled a very few days only before his decease, and it may therefore be inferred that he was too ill to attend. The name of Lord Abergavenny does not occur on the Journals, or in Dugdale's *Summons of the Nobility*, between the 29th Eliz. and 1st Jac. I.; but this does not prove that he was not summoned to the parliament of the 31st Eliz., because, as, it is presumed, he never sat in parliament, it is not likely that his name should occur on the Journals; and Dugdale's authority for the names of the persons summoned in the reign of Elizabeth is by no means satisfactory.

A search has been made in the Crown and Petty Bag Offices as well as in the Rolls Chapel, but no notice of a writ having been issued to Edward Nevill between the 28th and 31st Eliz. is on record.

<sup>1</sup> Dugdale's *Baronage*, vol. i. p. 311. *Collins's Precedents*, p. 136, and *First Peerage Report*, p. 436.

## APPENDIX No. II.

## CASE OF THE BARONY OF BOTETOURT.

As the proceedings relative to the Barony of Botetourt were frequently adverted to during those before the House on the claim to the Barony of l'Isle, and as most of the principles contended for on that occasion were admitted to exist in this case, all the facts are here minutely stated.

JOHN DE BOTETOURT, after having filled many distinguished offices, was appointed admiral of the king's fleet in the 21st Edw. I., and in the 28th Edw. I. was in the wars of Scotland<sup>1</sup>. In the 29th Edw. I. February, 1301, he was present in the parliament at Lincoln, when a letter was written by the barons of this country to the Pontiff relative to his claim to the sovereignty of Scotland, to which instrument he was a party by the description of "John de Botetourt, Lord of Mendlesham," and his seal is still attached to it<sup>2</sup>. On the 5th of April, 33rd Edw. I. 1305, he was present in parliament in the dispute relative to the Priory of Goldingham.<sup>3</sup> By writs tested at London on the 19th June, 33rd Edw. I. 1305, John de Botetourt, one bishop, two earls, three other barons, two abbots, and three judges, were commanded to attend a parliament at Westminster on the Feast of the Assumption of the Virgin, i. e. 15th August next following;<sup>4</sup> but by writs tested at Wymelingwelde on

<sup>1</sup> Dugdale's *Baronage*, tome ii. p. 46. *Rot. Parl.* vol. i. p. 95 b.

<sup>2</sup> *Parliamentary Writs*, p. 103.

<sup>3</sup> *Ex Orig. in Dom. Capit. Westmon. Asservat.*

<sup>4</sup> *Rot. Parl.* vol. i. p. 179 b. See p. 153, *ante*, note 2.

<sup>5</sup> *Parliamentary Writs*, p. 159.

the 13th of July, addressed to the Archbishop of Canterbury, several bishops and abbots, the Prince of Wales, five earls, nine barons, among whom was John de Botetourt, the judges and others, that parliament was prorogued until the octaves of the Nativity of the Virgin, September 8th to 15th, when they were commanded to attend<sup>1</sup>. This summons to Botetourt and others was repeated by writs, tested at Boxle on the 30th of July<sup>2</sup>, and at Rothing on the 27th of August<sup>3</sup>. The parliament met accordingly, and he was appointed and sworn in that parliament to treat with the Scottish representatives concerning the government of that country<sup>4</sup>. He was present in the council at Lanercost, 23rd October, 33rd Edw. I. 1305, when James, Steward of Scotland, performed homage to Edward<sup>5</sup>, in the record of which he is expressly described as a Baron; but he was never again summoned to parliament until the 10th of March, 1st Edw. II. 1308<sup>6</sup>. From that time until the 18th Edw. II. 1324, when he died<sup>7</sup>, he was summoned to every parliament, there being in all twenty-nine writs addressed to him in the reign of Edward the Second and four in that of Edward the First; but the only record which can prove that he was present in parliament in the reign of Edward the Second, was the commission for the regulation of the royal household on the 17th March, 1309-10<sup>8</sup>. On his demise in the 18th Edw. II.<sup>9</sup> his grandson John de Botetourt (the son of his eldest son, Thomas de Botetourt, who died *rita patris* in the 16th Edw. II. <sup>10</sup>) was found to be his heir, and who was then a child of the age of seven years. The said

JOHN DE BOTETOURT, the grandson and heir of John Lord Botetourt, became of age about the 13th Edw. III. 1339. On the 25th

<sup>1</sup> *Parliamentary Writs*, p. 159.

<sup>2</sup> *Ibid.* p. 160.

<sup>3</sup> *Ibid.* p. 160.

<sup>4</sup> *Ibid.* p. 161. *Rot. Parl.* vol. i. p. 267. See p. 153, *ante*, note 1.

<sup>5</sup> *Parliamentary Writs*, p. 180. "*Præsentibus nobilibus viris Dñ's Adomaro de Valenciâ Johanne de Hasting, Johanne Boteturte, Roberto de la Warde, Johanne de Suleia Baronibus, Johanne de Hastang et Johanne de Douedale Militibus, necnon Dñ's Johanne de Sandale, Wilhelmo de Bevercote,*" &c. "*Clericis et aliis,*" &c.

<sup>6</sup> *Appendix, No. I. to the First Peerage Report.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Rot. Parl.* vol. i. p. 443. See page 154, *ante*, note 1.

<sup>9</sup> *Escheat*, 18th Edw. II. No. 56.

<sup>10</sup> *Escheat*, 16th Edw. II. No. 56. On the death of his father in that year John, the second baron, was only four years old.



February, 16th Edw. III. 1342, he was summoned to attend at Westminster on Monday, the morrow of Easter next following, "*colloquium habere et tractatum*," but which Council was prorogued, by writs tested 15th March, until Monday after the Feast of St. Mark, *i. e.* 29th April<sup>1</sup>. From that time until the 39th Edw. III. he was never summoned to parliament; but by writ tested 20th January, 39th Edw. III. 1366, he was summoned to the parliament which was ordered to meet at Westminster on Monday the morrow of the Invention of the Holy Cross, *i. e.* 4th May following<sup>2</sup>; and he was summoned to every succeeding parliament up to the 9th Ric. II.<sup>3</sup>, when he died, forming a series of twenty-four consecutive writs. In the parliament which met at Westminster on Monday next after the Feast of St. George, 50th Edw. III., 28th April, 1376, Lord Botetourt was one of the mainpernors for Lord Latimer<sup>4</sup>.

According to Dugdale he was in the wars in France in the 16th, 21st, 29th, 33rd, 40th, and 42nd Edw. III<sup>5</sup>. He died in the 9th Ric. II., leaving Jocosa (or Joyce), the wife of Sir Hugh Burnell, Knt. (the daughter of his son John Botetourt, who died *in vita patris*) his heir, who was then twenty-two years of age<sup>6</sup>. She died without issue in the 7th Hen. IV., when her aunts, (or their issue,) the sisters of her father, were found to be her heirs; namely, her aunt Jocosa, *æt.* 40, the wife of Sir Adam de Peshale; her aunt Maud de Botetourt, a nun in the Abbey of Polesworth; her aunt Agnes de Botetourt, a nun at Elstow; her kinsman Maurice de Berkeley, *æt.* 7, son of Maurice de Berkeley, the son of her aunt Katharine, by Thomas de Berkeley; her kinswomen Agnes, *æt.* 9, and Jocosa, *æt.* 7, the daughters of Joan Wykes, daughter of her aunt Alice, the wife of — Kyriel<sup>7</sup>. Of these persons there were descendants of Jocosa, wife of Sir Adam de Peshale, by her first husband Sir Baldwin Freville; of Jocosa Wykes; and of Maurice de Berkeley: the others died without issue.

<sup>1</sup> *Appendix, No. I. to the First Peerage Report*, p. 538.

<sup>2</sup> *Ibid.* p. 539.

<sup>3</sup> *Ibid.* p. 640.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Rot. Parl.* vol. ii. p. 326. See page 155, *ante*, and note.

<sup>6</sup> *Baronage*, tome ii. p. 47, on the authority of the *Rot. Franc.* and *Rot. Vascon.*

<sup>7</sup> *Escheat*, 9th Ric. II. No. 4.

<sup>8</sup> *Escheat*, 8th Hen. IV. No. 64.

It appears, therefore, that John the first Lord Botetourt sat twice in parliament, namely, in February, 29th Edw. I. 1301, and in April, 33rd Edw. I. 1305, before he is recorded to have been summoned to parliament; that he received four writs commanding him to attend a parliament at Westminster on the 15th August, 33rd Edw. I. 1305; that he personally attended that parliament pursuant to those writs; that he was not again summoned until the 10th March, 1st Edw. II. 1310, though he is expressly styled a "baron" in a record of the 23rd October, 33rd Edw. I. 1305; and that he was regularly summoned to every parliament from the 1st to the 18th Edw. II., when he died.

His grandson and heir was then a minor, and did not become of full age until about the 13th Edw. III.; and though summoned by writ tested 25th February, 16th Edw. III., together with the Archbishop of Canterbury, seven bishops, ten earls, and ninety-six other persons, to attend at Westminster on Monday the morrow of Easter next following, "*colloquium habere et tractatum*," that writ is stated in the margin to be a summons to a *council*, and there are other reasons for considering that it was not a writ of summons to *parliament*<sup>1</sup>. He was never again summoned either to a council<sup>2</sup> or

<sup>1</sup> Besides the presumption that this writ was not a summons to a *Parliament*, arising from the fact that it is described in the margin "*De Concilio Summonito*," and that the writ proroguing that meeting is marked "*De Concilio prorogand*," the inference is supported by finding that one archbishop and seven bishops were the only spiritual peers summoned on that occasion, the usual number being two archbishops, eighteen bishops, and above thirty abbots or priors; that of the ninety-six lay persons summoned, besides the ten earls, many were summoned for the first time, and *seventeen* were never summoned to any previous or subsequent parliament, namely, Robert de Ufford, (son and heir apparent of the Earl of Suffolk, who died *vita patris*.) John de Montgomery, William Trussell, William de Felton, Constantine de Mortimer, Robert de Nevill, Thomas de Kirketon, John de Handlow, John de Pateshull, Thomas de Hastings, Ralph de Wylington, John l'Archdekne, John de Hardreshull, Peter de Veel, Hugh de Hastings, Nicholas de la Beche, Ralph Daubeney; and above all, that no writs were issued on that occasion for assembling the Commons.—See *First Peerage Report*, p. 493.

<sup>2</sup> By writ tested 20th June, 32nd Edw. III. 1358, a "John Botetourt de Byleye" was, with many other persons, of whom a great part were not peers, summoned to attend a *Council* at Westminster on Sunday after the Feast of St. Margaret the Virgin next following; but it is not certain that he was the John Botetourt mentioned in the text.

parliament until the 39th Edw. III., a period of *twenty-four years*, when he received a writ of summons to parliament, and continued to be so summoned until his death, in the 9th Ric. II. 1386; but he is only recorded to have been once present in parliament, namely, in the 50th Edw. III., when he was a mainpernor for Lord Latimer. His heir was his grand-daughter Jocosa, the wife of Hugh Lord Burnell, then *æt.* 22, she being the sister and heiress of John Botetourt, son and heir of his eldest son John Botetourt, who died *vita patris* in the 48th Edw. III'. On this lady the barony of Botetourt devolved, but as her husband succeeded to the barony of Burnell on the death of his father in 1383, and had been regularly summoned to parliament as "Lord Burnell" from that year, it is not to be expected that proof should now exist that he was recognised as Lord Botetourt. His wife died before him without issue, in the 7th Hen. IV., when the barony of Botetourt fell into *abeyance* among her aunts or their descendants, and continued in that state until 1764, a period of *three hundred and fifty-eight years*. In that year Norborne Berkeley, Esq., the heir-general of the body of the before mentioned Maurice de Berkeley, son of Maurice de Berkeley, son of Katharine, one of the daughters of John, second Lord Botetourt, petitioned His Majesty to be summoned to the ancient barony of Botetourt, stating "that John de Botetourt was summoned to parliament by writ in the 33rd Edw. I., and was present and sat in the parliament then holden; that the said John had issue a son named Thomas, who died in the life time of his father, leaving a son named John. That the said John succeeded his grandfather in the barony, having received several writs of summons, and sat in parliament in pursuance thereof, and died in the 9th Ric. II., leaving Joyce, his grand-daughter and heir, who died without issue in the 7th Hen. IV., and thereupon the barony fell into *abeyance* amongst her aunts (or their issue,) the five daughters of John, the last Lord Botetourt: and that the Petitioner was the sole heir of Katharine de Berkeley, one of the said daughters of John, the last Lord Botetourt." This petition was referred to the House of Lords, when it was stated by the claimant in his printed case that

<sup>1</sup> *Escheat*, 48th Edw. III. No. 11.

his claim would be fully made out if the following propositions were proved:—first, that there did exist a barony of Botetourt from the 33rd Edw. I. to the 9th Ric. II. created by the writs of summons as a barony in fee; secondly, that it was in abeyance amongst the co-heirs, of which the petitioner was one.

“ With respect to the first proposition—it was a certain rule in law that the sitting in parliament, by virtue of a writ of summons, without letters-patent, gave a barony in fee; and it was also certain, that whoever claimed such a barony must show, by the Records of Parliament, that the ancestor to whom he was heir was summoned to, and sat in, parliament. There were two points, therefore, necessary to be proved. First, that the person in whose right the barony was claimed was summoned without letters-patent; secondly, that by virtue of that summons he was present and sat in parliament.

“ The first point to be proved could admit of no doubt: there were seventeen writs of summons to John, the first Lord Botetourt, and eighteen to John, the second, all which must have been without letters-patent, for the last was in the 9th year of Richard the Second, and the eldest creation of a barony by letters-patent was two years after, viz., 11 Ric. II. The second point to be proved admitted of no other evidence than the Records of Parliament, and certain records are there stated to show that John Botetourt, the grandfather, and John, the grandson, were present and sat in the parliaments to which they were summoned.

“ With respect to the second proposition, That this barony was in abeyance among co-heirs, whereof the petitioner was one, it being a matter of fact it would be proved by evidence<sup>1</sup>.

“ The House of Lords resolved that the barony of Botetourt was in abeyance, and that the petitioner was one of the co-heirs of John Lord Botetourt<sup>2</sup>.” Soon after, a writ of summons was issued to Mr. Berkeley by the name of “ Norborne de Botetourt, Chevalier,” in consequence of which he was seated in his place on the baron’s bench next after Lord Dacre<sup>3</sup>, on the 13th April, 1764, and died in 1776,

<sup>1</sup> *Cruise on Dignities*, p. 188, *et seq.* from the Printed Case.

<sup>2</sup> *Lords’ Journals*, vol. xxx. p. 561. 10 April, 1764.

<sup>3</sup> This must have been considered the precedence created by the writ to John de Botetourt in the 33rd Edw. I., though the date of the earliest writ issued to Ralph

without issue, when the barony again fell into Abeyance among the co-heirs of John Lord Botetourt, who died in the 9th Ric. II.

On the 4th June, 1803, his late Majesty was pleased to determine that abeyance in favour of Henry fifth Duke of Beaufort, son and heir of Elizabeth, who died in 1799, sister and heiress of Norborne the last Lord Botetourt, by Charles Noel, fourth Duke of Beaufort; and it devolved on his grace's death in 1803 on Henry Charles, the present Duke of Beaufort, and Baron Botetourt.

Mr. Cruise states<sup>1</sup> what were the proofs on the Rolls of Parliament that the two Lords Botetourt sat in parliament; but he derived his information from the Printed Case and not from the Committee Books. On examining the Committee Books it appeared that a record was tendered in evidence before the Committee that the first baron was present in parliament, viz. the entry on the Clause Rolls, 33 Edw. I. m. 3 dorso, entitled "*Ordinatio facta per Dominum Regem super stabilitate terræ Scotiæ.*" The effect of this record is, that the king, in the parliament, held at Westminster in Lent, in the 33rd year of his reign, had made known by the Bishop of Glasgow, the Earl of Carrick and others, that the people of Scotland should assemble the Commons, and from among them select a certain number of persons to the parliament, which after many prorogations was held at Westminster in the octaves of the Nativity of the Virgin in the 33rd Edw. I. 1305, when several bishops, abbots, earls, barons, among whom was John de Botetourt, and others, were appointed to treat with those commissioners relative to the government of that country; but that record was, after some discussion, refused to be received in evidence, because it was not written upon the Clause Roll, but affixed or tacked to it, because it was written in a different hand, and because the parchment was

de Dacre, the first person of that name ever summoned to parliament, was in the 14th Edw. II. The said Ralph de Dacre was the husband of Margaret, the daughter and heir of Thomas de Multon, who was summoned in the 1st Edw. II., to whose precedence he was probably entitled; but still this<sup>1</sup> does not explain why Lord Botetourt was placed *after* Lord Dacre. It is, however, impossible to reconcile the precedence which some of the oldest barons by writ enjoy in the House of Lords with any uniform principle.

<sup>1</sup> p. 263, *et seq.* from the Printed Case.

not of the same size as the roll. The counsel for the petitioner, therefore, contented themselves with producing the roll of the 50th Edw. III. to prove that John, the second Lord Botetourt, was one of the mainpernors in parliament in that year for Lord Latimer, and which was the only proof of sitting received.

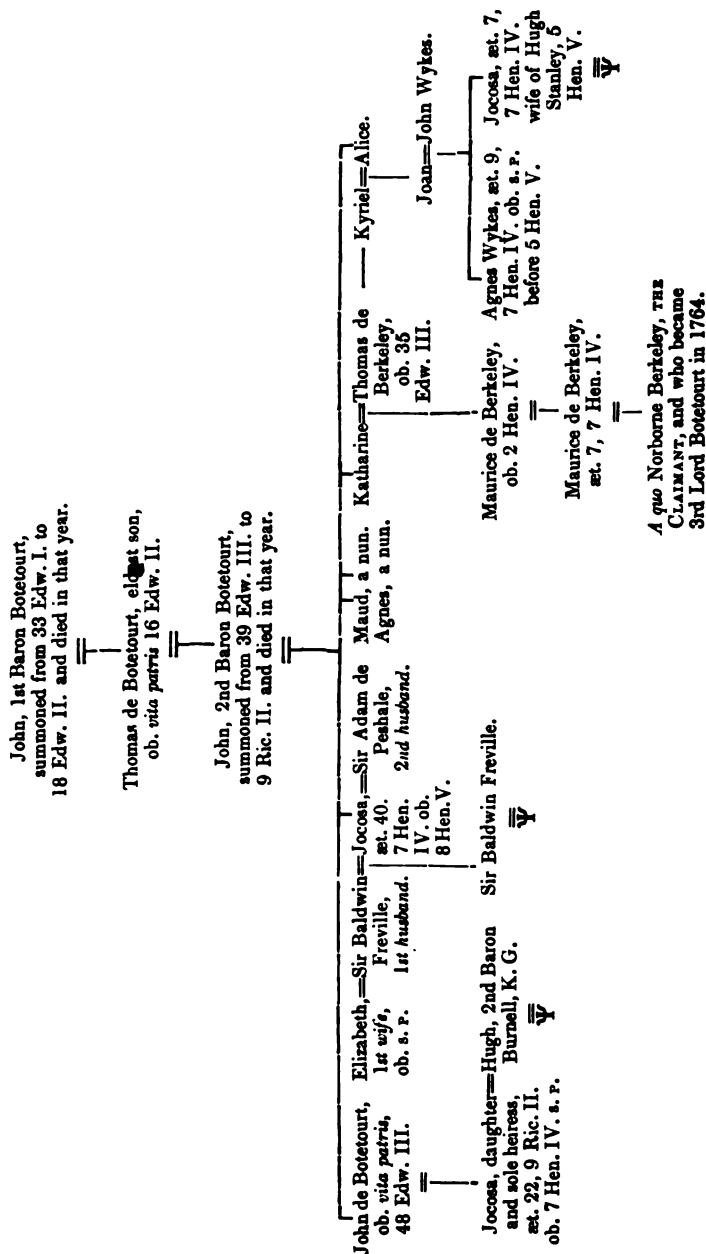
It is manifest that in this decision the law, as laid down by Lord Coke, that a writ of summons to and a sitting in parliament created an hereditary dignity, without reference to the period when the writs and sittings took place, was still held to be law; and as the labours of the Committees appointed to Report on the Dignity of a Peer of the Realm, have not brought to light a single fact relative to baronies by writ which was not known before; and as the doubt expressed in some parts of the latter Reports of those Committees, whether a writ and sitting did create an hereditary honour in early times, and which a noble lord stated as his reason for thinking the claim to the barony of l'Isle was not made out, had been not only mentioned by Prynne and other writers, but had been urged by counsel for the Crown at the bar of the House long before the decision in the Botetourt case, it is scarcely possible to understand upon what grounds a different opinion is now entertained on the subject.

The decision in the Botetourt case is also important, because it tends to establish, as had long before been done in the Berners and many other cases, that no period of time can extinguish a peerage, a principle most eloquently contended for in the Banbury case by the late Lord Erskine, but which was questioned on that occasion, as well as in the claim to the barony of l'Isle, by Lord Redesdale<sup>1</sup>.

The Descent of the Barony of Botetourt will be best illustrated by the subjoined Pedigree.

<sup>1</sup> See note, pp. 106, 107, 108, *ante*.

# DESCENT OF THE BARONY OF BOTETOURT.



## APPENDIX No. III.

## THE BARONY OF BERKELEY.

THE frequent allusions which are made in the preceding pages to the Barony of Berkeley; the fact that a claim to that dignity is at this moment before the House; the extraordinary points of law which it involves; and the probability which exists, that Sir John Shelley Sidney is the eldest co-heir of the original barony of Berkeley, render it necessary to introduce a full and impartial statement of that case.

In the 1st Richard I. Maurice de Berkeley obtained a grant to him and his heirs of the lordship of Berkeley Hernesse, to be holden of the King and his heirs *in barony* by the service of five knights, but which service was afterwards reduced to three<sup>1</sup>. These lands were inherited by Robert, the son and heir of the said Maurice, to whom Richard the First, after his return to England, and King John, confirmed them.\* He died in the 4th Hen. III. 1220, leaving Thomas, his brother, his heir; who dying in the 28th Hen. III. 1243, was succeeded by Maurice, his son and heir; who died in the 8th Edw. I. 1281, and was succeeded by Thomas, his son<sup>2</sup>. All those persons inherited the lordship of Berkeley Hernesse,

<sup>1</sup> Charter 1 Ric. I., printed in the Appendix, No. i. to the "Printed Case of William Fitzhardinge Berkeley, of Berkeley Castle, in the county of Gloucester, in support of his petition to His Majesty, claiming the dignity of Baron de Berkeley as a Baron by Tenure."

<sup>2</sup> Charters 10th Ric. I. and 1st John. *Ibid.* Appendixes, Nos. ii. and iii.

<sup>3</sup> *Printed Case*, p. 2. Dugdale's *Baronage* and other authorities.



and there is no reason to doubt that by the tenure of it they were Barons of the Realm.

The earliest writs of summons to parliament extant, excepting those of the 49th Hen. III., are tested 24th June, 23rd Edw. I. 1295, and on that occasion, THOMAS DE BERKELEY last mentioned, who succeeded his father in the 8th Edw. I., was summoned to parliament<sup>1</sup>, and was regularly summoned from that time until the 15th May, 14th Edw. II. 1321<sup>4</sup>. The only occasion on which he is recorded to have been present in parliament is in February, 29th Edw. I. 1301, when he was a party to the letter from the barons at Lincoln to Pope Boniface VIII., in which he is styled "Thomas Dominus de Berkeleye<sup>3</sup>." He died seised of Berkeley Hernesse in July, 15th Edw. II. 1321<sup>4</sup>, leaving

MAURICE DE BERKELEY, his son and heir, of the age of forty years and upwards<sup>5</sup>. On the 16th August, 2nd Edw. II. 1308, *vita patris*, he received a writ of summons to parliament, and he continued to be summoned until the 15th May, 14th Edw. II. 1321<sup>6</sup>, but there is no evidence that he ever sat in parliament. Having about that time joined the Earl of Lancaster in his rebellion, his lands were seized; and he was arrested and thrown into prison<sup>7</sup>, where he died on the 31st May, 19th Edw. II. 1326<sup>8</sup>. His son and heir

THOMAS DE BERKELEY obtained restitution of his father's lands in the counties of Gloucester and Somerset, by writ, tested 22nd February, 1st Edw. III. 1327<sup>9</sup>. and in Easter Term, 4th Edw. III. he paid a relief for them "ut pro baroniâ<sup>10</sup>." In the parliament held at Westminster on Monday next after the feast of St. Katharine the Virgin, 3rd Edw. III., 27th November, 1329, he was accused of having murdered King Edward the Second whilst in his custody

<sup>1</sup> *Parliamentary Writs*, p. 29.

<sup>2</sup> *Ibid.* pp. 102. 103.

<sup>3</sup> *Appendix, No. I. to the First Peerage Report.*

<sup>4</sup> *Escheat*, 15th Edw. II. No. 46.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Appendix, No. I. to the First Peerage Report.*

<sup>7</sup> *Faxiera*, N. E. vol. ii. p. 471. Dugdale's *Baronage*, tome i. p. 355. A memoir of this Maurice de Berkeley, embracing all that is known of him, will be found in the Memoirs annexed to *The Siege of Carlaverock*, 4to. 1828, p. 314.

<sup>8</sup> Dugdale's *Baronage*, i. p. 355.

<sup>9</sup> *Rot. Parl.* vol. ii. 423.

<sup>10</sup> *Printed Case*, p. 2. and Appendix, No. x.

in Berkeley Castle; but pleading that at the time of the murder he was sick at Bradley, and that he was in no way accessory to the crime, he was acquitted by a jury<sup>1</sup>: he was not, however, released from mainprise until the 5th Edw. III<sup>2</sup>. Though summoned "cum ceteris prelatiis magnatibus et proceribus colloquium habere et tractatum," by writs, tested 13th June, 3rd Edw. III. 1329, 5th June and 6th September, 4th Edw. III. 1330, and 20th November, 5th Edw. III. 1331<sup>3</sup>, the earliest writ of summons to parliament addressed to him was dated 1st April, 9th Edw. III. 1335, from which time he was regularly summoned until November, 34th Edw. III. 1360, and in the two last writs as "Thomas de Berkeley, *senior*<sup>4</sup>." He was present in parliament in the 13th, 15th, 17th, 18th, 20th, and 21st Edw. III.<sup>5</sup> By fine in the 23rd Edw. III. he settled the castle of Berkeley, with divers manors, on himself for life, with remainders over; and the reversion to his own right heirs<sup>6</sup>. He died on the 27th October, 35th Edw. III. 1361<sup>7</sup>, leaving

MAURICE DE BERKELEY, his son and heir, thirty years of age<sup>8</sup>, who immediately obtained livery of his father's lands<sup>9</sup>. He was summoned to attend a council in the 16th Edw. III.<sup>10</sup>, but his first writ to parliament was tested 14th August, 36th Edw. III. 1362; from which time similar writs were addressed to him until the 24th February, 42nd Edw. III. 1368<sup>11</sup>. In the 37th Edw. III. he was sued in the exchequer for the relief on his father's death, whereupon he pleaded the King's license to his father to entail, and that his father being but tenant for life under such entail, he, the said Maurice, was not bound to give any relief to the King; and it was found by inquisition that the castle and manor of Berkeley and other lands were of the barony of Berkeley and constituted that

<sup>1</sup> Rot. Parl. vol. ii. p. 57.

<sup>2</sup> Ibid. p. 62.

<sup>3</sup> Appendix, No. I. to the First Peerage Report.

<sup>4</sup> Ibid.

<sup>5</sup> Rot. Parl. vol. ii. pp. 103. 113 b. 126 b. 135 b. 146 b. 147. 148. 157, 158. 164.

<sup>6</sup> Printed case, Appendix, No. xi.

<sup>7</sup> Escheat, 35th Edw. III.

<sup>8</sup> Ibid.

<sup>9</sup> Printed case, Appendix, xiii.

<sup>10</sup> Appendix, No. I. to the First Peerage Report, p. 538. See p. 312, note 1, ante, for some remarks on that writ.

<sup>11</sup> Ibid.

barony<sup>1</sup>. He is not recorded to have ever been present in parliament; and died in the 42nd Edw. III. 1368<sup>2</sup>, when

THOMAS DE BERKELEY was found to be his son and heir, and of the age of fifteen<sup>3</sup>. He is not stated to have been summoned to parliament as "Thomas de Berkeley" until the 16th July, 5th Ric. II. 1381, but there can be little doubt that the writ of the 4th August, 1st Ric. II. 1377, as well as those in the 2nd, 3rd, and 4th Ric. II., though addressed to *Maurice de Berkeley*<sup>4</sup>, were in fact intended for him, and that an error was committed with respect to his baptismal name. He continued to be regularly summoned until the 3rd September, 5th Hen. V. 1417<sup>5</sup>; and was present in parliament in the 50th Edw. III.; 21st Ric. II.; 1st, 2nd, 4th, 5th, 6th, 7th, 8th, 9th, 11th, 13th Hen. IV.; and 1st, 2nd, 3rd, and 4th Hen. V.<sup>6</sup> In the 47th Edw. III. he married Margaret, daughter and sole heiress of Warine Lord l'Isle<sup>7</sup>, and covenanted that he and his issue by her should bear the arms of l'Isle<sup>8</sup>. He died on the 13th July, 5th Hen. V. 1417<sup>9</sup>, leaving his nephew, James, son of his brother James de Berkeley, his heir male; but the heir of his body was his daughter, Elizabeth, the wife of Richard Beauchamp, Earl of Warwick, then of the age of thirty years and upwards<sup>10</sup>.

A contest arose between the Countess of Warwick and the said James de Berkeley for Berkeley Castle and the other lands of which Thomas Lord Berkeley died seised in the 5th Hen. V., he claiming under the entail made in the 23rd Edw. III. by his great grandfather, as the heir male of that person; but the Earl and Countess of Warwick took possession of the castle, and obtained a grant from the King of the custody of those lands as long as they should remain in the Crown<sup>11</sup>. The Earl held courts there in the name of

<sup>1</sup> *Printed Case*, Appendix, Nos. xiii. and xiv.

<sup>2</sup> *Escheat*, 42nd Edw. III. No. xii.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Appendix*, No. I. to the *First Peerage Report*.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Rot. Parl.* ii. 327; iii. 356. 416. 424. 427. 455. 459. 486. 503. 546. 567 b. 568. 582. 609. 623. 648; iv. 4. 16. 35. 71. 95.

<sup>7</sup> *Escheat*, 6 Ric. II. No. 47. See p. 7, *ante*.

<sup>8</sup> Cited in Collins's *Sydney Papers* from the Original. See p. 8, *ante*.

<sup>9</sup> *Escheat*, 5th Hen. V.

<sup>10</sup> *Ibid.*

<sup>11</sup> Dugdale's *Baronage*; but it does not appear how the Crown obtained possession of them.

himself and his wife without any respect to the King's grant, she pretending a clear right to them all, "as also to the barony." Upon a writ of *diem clausit extremum* sued by James de Berkeley, he was found heir in the 5th Hen. V. of the castle and other lands mentioned in the fine of the 23rd Edw. III., yet the Earl retained possession of them until the King commanded him to surrender them to the right heir. Through the promise of a bribe to the Duke of Gloucester of one thousand marks, James de Berkeley obtained his livery in the 9th Hen. V., paid his relief as a baron, and was summoned to parliament. The dispute was, however, renewed in the early part of the reign of Henry the Sixth; and notwithstanding various awards, Margaret, Countess of Shrewsbury, the eldest daughter of the Earl of Warwick, and co-heir to her mother, claimed several manors which had been assigned to James de Berkeley, and had recourse to personal violence to obtain her wishes<sup>1</sup>. Sir William Dugdale has fully related the particulars of the quarrel which proved fatal to Thomas Talbot, second Viscount l'Isle, grandson of the Countess of Shrewsbury<sup>2</sup>; but without meaning to impute any improper conduct to that eminent writer, it must be observed that he was evidently a partial historian of the affair; and if any stress be laid upon the right to Berkeley Castle at that period, in relation to the dignity of a peer of the realm, it would be important that all the muniments which he has cited should be carefully examined. The Countess of Warwick, daughter and sole heir of Thomas, 4th Lord Berkeley, died about 1423<sup>3</sup>, and the earl, her husband, in 1439<sup>4</sup>. By him she had three daughters, who were her co-heirs, namely, Margaret, who was the second wife of John Talbot Earl of Shrewsbury, and of whom Sir John Shelley Sidney is the sole heir; Eleanor, who married, first, Thomas Lord Roos, and, secondly, Edmund Beaufort Duke of Somerset, by both of whom she left issue; and Elizabeth, who married George Neville Lord Latimer, and had issue<sup>5</sup>. It would appear from the inscription on the monument of the Countess of Shrewsbury that the barony of Berkeley was attributed to her mother, the Countess of Warwick, "the which Elizabeth was daughter and heyre to

<sup>1</sup> Dugdale's *Baronage*, i. pp. 362, 363.

<sup>2</sup> See p. 11, *ante*.

<sup>3</sup> See p. 99, *ante*, note 2.

<sup>4</sup> See p. 8, *ante*.

<sup>5</sup> *Ibid*.

Thomas, late Lord Berkeley, on his side, and on her moder's side, Lady l'Isle and Teyes';" but though it has been proved that the Earl of Warwick styled himself LORD L'ISLE, *jure uxoris*<sup>1</sup>, no evidence has been discovered that he added the title of "Baron Berkeley" to his other honours.

JAMES DE BERKELEY, the nephew and heir male of Thomas, the last lord, was summoned to parliament from the 20th October, 9th Hen. V. 1421, to the 23rd May, 1 Edw. IV. 1461<sup>2</sup>, and was present in parliament in the 11th and 18th Hen. VI.<sup>4</sup> He died seised of Berkeley Castle in the 3rd Edw. IV. 1463<sup>4</sup>, leaving

WILLIAM DE BERKELEY, his son and heir. He was summoned to parliament as a baron from the 28th February, 6th Edw. IV. 1467, to the 19th August, 12th Edw. IV. 1472<sup>6</sup>; and on the 12th April, 21st Edw. IV. 1481, was created Viscount Berkeley: on the 28th June, 1 Ric. III. 1483, he was raised to the Earldom of Nottingham; in 1485 he was made Earl Marshal; and in 1488, Marquess of Berkeley, with remainder of each of those dignities to the heirs male of his body<sup>7</sup>. In Michaelmas and Easter Terms, 2 Ric. III. 1485, he suffered a recovery of the castle of Berkeley and other lands, and thereby acquired the fee simple thereof<sup>8</sup>; and on the 10th December, 3 Hen. VII. 1487, he settled the castle and manor of Berkeley to his own use in tail general; remainder to King Henry the Seventh in tail male; remainder to his own right heirs<sup>9</sup>. The Marquess died without issue on the 12th February, 7th Hen. VII. 1492<sup>10</sup>, when the viscounty, earldom and marquissate became extinct; and the King became seised of the castle and manor of Berkeley in tail male, which descended to his son, King Henry the Eighth, and to his son, King Edward the Sixth, on whose demise the heirs male of Henry the Seventh failed, and

<sup>1</sup> See p. 9, *ante*, note 3.

<sup>2</sup> See p. 8, *ante*.

<sup>3</sup> Appendix, No. I. to the First Peerage Report.

<sup>4</sup> Rot. Parl. vol. iv. p. 422; vol. v. p. 4.

<sup>5</sup> Rot. Fin. 3 Edw. IV. cited by Dugdale, *Baronage* i. p. 364.

<sup>6</sup> Appendix, No. I. to the First Peerage Report.

<sup>7</sup> Patents of the respective years.

<sup>8</sup> Printed Case, Appendix xxviii.

<sup>9</sup> *Ibid.* Appendix xxix.

<sup>10</sup> *Ibid.* Appendix xxx. *Escheat eod. ann.*

the castle, &c. reverted to the right heirs of the marquess. The Marquess of Berkeley's heir at law, at his decease, was his brother,

MAURICE DE BERKELEY<sup>1</sup>, who was never summoned to parliament, and is described in several records as a commoner<sup>2</sup>. He died in the 22nd Hen. VII. 1506<sup>3</sup>, leaving

MAURICE DE BERKELEY his son and heir<sup>4</sup>, who was made a Knight of the Bath at the coronation of Henry the Eighth, and until the fourteenth year of that reign was considered a commoner<sup>5</sup>. In that year he was summoned to parliament as a baron, but of that fact there is no other evidence than the following letter from Sir John Fitz-James, then Chief Baron of the Exchequer, and two other persons, the writs of summons of that year not being on record, and the Journals of the House of Lords between the 7th and 25th Hen. VIII. having been lost. This letter is therefore of considerable importance, not only as proof of the writ of summons having issued to him, but that he was then considered to have been *created* a peer instead of having succeeded to the barony enjoyed by his ancestors; and considerable stress is laid on it in the present Petitioner's Case as testimony that the ancient dignity was then held to be attached to the tenure of Berkeley Castle, which was at that moment in the Crown under the settlement of the Marquess of Berkeley in the 3rd Hen. VII.

" TO MY LORDE BERKELEY, LIEUTENANT OF THE CASTELL OF  
CALEYS.

" In our right hartie maner wee reccomende us to your gode Lordeschippe, so it is we perceyve by your servante, George Scheparde, that ye wulde be content to knowe our advise in taking of this honor which the Kingg's grace by his write hath late called yowe to; Sir, we all will advise yowe to take the honor, and howe be it, that as yett ye have not the rome, in the parlement chamber, that the Lordds Berkeley have hadde of olde tyme, yett we will advyse you to take this rome at this time, for causes to long to writte; and yet diverse lordds, your fryndds here wulde have had

<sup>1</sup> *Printed Case*, Appendix xxx. *Escheat eod. ann.*

<sup>2</sup> *Ibid.* Appendixes xxxi. xxxii.

<sup>4</sup> *Ibid.*

<sup>3</sup> *Ibid.* Appendix xxx.

<sup>5</sup> *Ibid.* Appendixes xxxiii. xxxiv. xxxv.

yowe labor for the Lorde Barkeleis rome, how be it paraventure ye shall have more convenient tyme hereafter than nowe. And for your ferther spede in this mater we have causid your name to be enterid in the parlement roll with your writte, and have desirid the Lorde Mounteyoie to appier there for yowe, and to geve his voyce for yowe in like maner as in tyme passede hathe ben uside one lord to do in the absense of a nother; so that ye stond nowe, by mater of recorde, in the full estate and degree of a baron', whereyn we praye God sende yowe good contynewaunce with as moche honor as ever hadde baron bifore yowe. At London the vi th daie of Maie [1523, 15th Hen. VIII.] your owne assurde,

JOHN FITZ-JAMES.

RYCHARD WEYSTON.

WYLLYAM DENYS<sup>2</sup>."

He died without issue at Calais, 12th September, 15th Hen. VIII. 1523<sup>1</sup>; and his brother,

THOMAS DE BERKELEY was his heir<sup>3</sup>; who by writ, tested 9th August, 21st Hen. VIII. 1529, was summoned to a parliament to meet on the 3rd of November following<sup>4</sup>; but the Lords' Journals for that and four subsequent years being lost, it is not possible to prove in what precedence he sat in the House. From a MS. in the College of Arms, printed by Dugdale, it would appear, however, that

<sup>1</sup> This passag: is particularly deserving of attention, because it tends to show that in the 15th Hen. VIII. *sitting in parliament* upon the delivery of a writ of summons was not necessary to render the individual so summoned a baron of the realm. It is certain that when Sir John Fitz-James wrote Lord Berkeley had not taken his seat, and was at Calais, where he died on the 12th of September following, yet the Chief Baron tells him that having caused his name, with his writ, to be entered on the Roll of Parliament, and desired Lord Montjoy to act as his proxy, he "now stood by matter of record in the full estate and degree of a baron."

<sup>2</sup> Printed Case, p. 5, from the Original preserved among the muniments in Berkeley Castle. It is cited by Dugdale, and the same deductions are drawn from it.

<sup>3</sup> Dugdale's *Baronage*, vol. i. p. 368, on the authority of evidences in Berkeley Castle, and *Patent*, 16 Hen. VIII. p. 1.

<sup>4</sup> Dugdale's *Summons of the Nobility*, p. 495, ex. Rot. pergamenaceo in Officio Parvi Bag. *Federa*, vol. xiv. p. 303, from the Clause Roll.

he took his seat in the precedence of the original barony'. He died on the 28th of January, 24th Hen. VIII. 1532-3<sup>d</sup>, leaving

THOMAS DE BERKELEY, his son and heir, of full age<sup>1</sup>, who was summoned to parliament as "Thomas Berkeley de Berkeley, Chivaler," in January, 25th Hen. VIII. 1534<sup>2</sup>. The Journals show that he was present in parliament on no less than twenty-four occasions, and his name occurs in every instance as the *third* baron

<sup>1</sup> *Summons of the Nobility*, p. 497, from a MS. in the College of Arms, marked 2 H. 13. f. 403. After describing the procession of the King from Westminster by water to Bridewell, and the manner of assembling in parliament on the 3rd of November, the MS. states, "at this parliament these lords following made their first entry into the Parliament Chamber, of whom Garter demandeth to have a reward for their said first entries and the ordering of their seats, and registering of their names and arms of every one after their estates, according to the old ordinance."

First the Marquess of Exeter.	The Lord Cobham, xx s. [1313.]
The Earl of Oxford [1155.]	The Lord Powes, xx s. [1313 $\frac{1}{2}$ .]
The Earl of Northumberland, xxx s. [1377.]	The Lord Grey, of Wilton, xx s. [1295.]
The Earl of Westmoreland [1397.]	The Lord Lumley, xx s. [1461.]
The Earl of Worcester [1514.]	The Lord Montaigle xx s. [1514.]
The Earl of Rutland [1525.]	The Lord Hussey, xx s. [1529.]
The Earl of Cumberland [1525.]	The Lord Windsor, xx s. [1529.]
The Lord of St. Johns [a Prior.]	The Lord Tailbois, xx s. [1529.]
The Lord Zowche, xx s. [1308*.]	The Lord Waintworth, xx s. [1529.]
The Lord Laware, xx s. [1294 or 1299.]	The Lord Burgh, xx s. [1437.]
The Lord Montagu, xx s. [1300 or 1529†.]	The Lord Bray, xx s. [1529.]
The Lord Berkeley, xx s. [1295.]	The Lord Mordaunt, xx s. [1529.]
The Lord Dacre of Graystock, xx s. [1295‡.]	

The dates within brackets are the years from which the barons are presumed to have taken precedence, and notwithstanding one or two discrepancies, they prove that Lord Berkeley was placed in the precedence of the barony of 1295.

<sup>2</sup> *Dugdale's Baronage*, vol. i. p. 368. *Printed Case*, Appendix xxxix.

<sup>3</sup> *Dugdale's List of Summons*, p. 498, ex *Diario Domus Procerum in Parlamento*.

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\* The mother of the Lord Zouche, who was summoned in the 1st Edw. II. 1308, was one of the co-heirs of George de Cantilupe, a Baron by the tenure of the castle of Abergavenny, and it is possible that his precedence over barons created by writ *temp.* Edw. I. may be assigned to that cause.

† The precedence of the ancient barony of Montagu, of which he was a co-heir.

‡ The precedence of the barony of Greystock, of which he was the heir general.

§ The precedence of the barony of Charlton de Powis, of which he was a co-heir.



on the roll'. He died on the 22nd September, 26th Hen. VIII. 1534'; and on the 26th of November following, his posthumous son,

HENRY DE BERKELEY<sup>1</sup> was born. On the death of King Edward the Sixth in 1553, he became entitled to the castle and manor of Berkeley and other lands which the Marquess of Berkeley settled on Henry the Seventh and his heirs male; and "these manors so coming to him, he being within age, and the doubt being whether he were to be in ward to the queen and to sue livery at full age, her majesty, under her signet, dated 8th September, 1st and 2nd Mary, 1554, to the Master and Council of the Court of Wards, gave them special warrant to pass his livery of those lands, only at the old rent during the minority, as if he had been of full age<sup>2</sup>." He was present in parliament in the 4th and 5th Philip and Mary, when he was placed even lower than where his father sat, as in the Journals of that parliament he stands next to Lord Morley, though *he was then possessed of the castle of Berkeley*. On the 25th day of January, his name occurs in the Journals next below Lord Morley: on the 26th and on all subsequent occasions, he was placed next below Lord Audley, and above both Lord Zouche and Lord Morley. In the 5th of Elizabeth he stands in the Journals as the fifth baron, between Zouche and Morley, the three above Zouche being the Barons Abergavenny, Audley, and Strange, but neither of whom was entitled, according to the dates of the earliest writs directed to their ancestors, to be placed above him, if he enjoyed the barony created to Thomas de Berkeley in the 23rd Edw. I. He died in the 13th Jac. I. 1613, and was succeeded by his grandson,

GEORGE LORD BERKELEY, who died in 1658: his son and heir,

<sup>1</sup> *Lords Journals*, vol. i. pp. 65 to 82.

<sup>2</sup> *Escheat*, 27th Hen. VIII. and 2nd and 3rd Ph. and Mary. Cole's *Escheats in Harl. MSS.* 756, 757. ff. 27. 113, 114. 255. If Cole's *Notes of the Inquisitions* in the 2nd and 3rd Ph. and Mary can be relied on, Lord Berkeley, who died in the 26th Hen. VIII., and his father, Thomas Lord Berkeley, were both styled in those records "Lord Berkeley, Mowbray and Segrave."

<sup>3</sup> Cole's *Escheats*, *Harl. MSS.* 756. f. 440. from a bundle in the Court of Wards, entitled "Special Warrants, per Hen. VIII., Edw. VI. and Queen Mary." The pedigree appears to be recited in the document referred to.

GEORGE LORD BERKELEY, petitioned the King, in May, 1661, to be allowed a place in parliament above and before Lord La Warr, grounding his claim on the barony being by tenure of the Honour of Berkeley; "and that, in consequence of William Marquess of Berkeley having entailed the said Honour upon King Henry the Seventh, it was in the Crown until the death of King Edward the Sixth; that Sir Maurice de Berkeley, nephew and heir of the marquess, did by reason of that entail sit no otherwise than as a puisne baron; and that on the death of Edward the Sixth, Henry Lord Berkeley, nephew and heir to the said Maurice, being not till that time in a capacity to challenge the place of his ancestors, was then under age; that since he came of age, partly by reason of minorities of the Lords Berkeley and De la Warr, and partly for that two of the Lords de la Warr were long in Virginia, there hath been no proper opportunity for any of the said Lords Berkeley to exhibit their claim, and to have the place of his ancestors, which the Lords Berkeley before that entail so made by the said Marquis Berkeley had and enjoyed<sup>1</sup>." This petition was referred to the House, when counsel were ordered to be heard on both sides, and after several adjournments it was resolved on the 14th of June, that if Lord La Warr's counsel did not attend on the 20th of that month the House would decide without any further delay. Nothing appears to have taken place until the 19th December, 1670, when Lord Berkeley again petitioned the King, stating that he conceived he did not enjoy his proper precedency in parliament, and praying that the point might be ascertained; but instead of merely claiming precedence of Lord La Warr as in 1661, it seems that he then claimed precedence of all the barons who were seated above him, namely, the Lords Abergavenny, Audley, and La Warr. After various adjournments, it was resolved on the 26th March, 1673, that the consideration of the claim should be again heard on the second Thursday after the then approaching recess, but no further notice of the subject occurs on the Journals; and as Lord Berkeley continued to sit below Lord La Warr until he was created an earl, it must be concluded that he did not establish his pretensions. It is remarkable

<sup>1</sup> *Lords' Journals*, xi. p. 257.



that whilst the question was before the House, the Earl of Berkshire suggested, on the 14th February, 1670, that the Duke of Norfolk<sup>1</sup> might be heard touching his precedence as Lord Mowbray, on which Lord Berkeley declared that his claim of precedence was only relating to the Lords La Warr, Audley, and Abergavenny, but not to the Duke of Norfolk as Lord Mowbray<sup>2</sup>, "to whom he quits any pretence of "precedency;" and when Henry, the son and heir apparent of the Duke of Norfolk, was summoned to parliament as Lord Mowbray in 1678, he always took precedence of Lord Berkeley<sup>3</sup>. He was created by patent, 11th September, 31st Car. II. 1679, Viscount Dursley and Earl of Berkeley, to him and the heirs male of his body; and dying in October, 1698, was succeeded by his son and heir,

CHARLES, 2nd EARL OF BERKELEY, on whose death, in September, 1710, his honours devolved on his son and heir,

JAMES, 3rd EARL OF BERKELEY, who died in August, 1736, and was succeeded by his son and heir,

AUGUSTUS, 4th EARL OF BERKELEY: he died in January, 1755, and was succeeded by his son and heir,

FREDERICK AUGUSTUS, 5th EARL OF BERKELEY, on whose death, in August, 1810, the Earldom of Berkeley and dignities of Viscount Dursley and Baron Berkeley were claimed by William Fitzhardinge Berkeley, then commonly called Lord Dursley and representative in parliament for the county of Gloucester. The claimant stated himself to be the eldest son and heir of the deceased earl, being born 26th December, 1786. His petition was referred for investigation to the Attorney-General, by whose report it appeared that the late earl was stated to have been twice married to his countess, the mother of the claimant—*first*, as alleged, at Berkeley, 30th

<sup>1</sup> His father, Henry Frederick Howard, Earl of Norfolk, Arundel and Surrey, was summoned to parliament, *vita patris*, in 1639 as Lord Mowbray, and took his place as senior baron, when the abeyance of that barony is considered to have been terminated, though he was not himself a *co-heir*. The barony of Mowbray was previously in abeyance between his father, Thomas Earl of Norfolk, and Lord Berkeley.

<sup>2</sup> *Lords' Journals*, vol. xii. p. 429.

<sup>3</sup> *Ibid.* vol. xiii. p. 594. The names thus occur on the *Journals* on the 27th May, 1679, when the King was present, and which appears to be the last time Lord Berkeley sat as a baron:—"Mowbray," "De la Warr," "Berkeley," &c.

March, 1785, and *secondly*, at Lambeth, 16th May, 1796. As to the solemnization of the second marriage and its due registration there was not any doubt or question, but the fact of a marriage having taken place in 1796, so long after the claimant's birth, rendered investigation of the first imperative. The petition, with the Attorney-General's report, was referred to the consideration of the House of Lords. The case turned entirely upon the *truth* of the statement of the alleged marriage in 1785, the registration of which (supposed for many years to have been lost or never made) was discovered under extraordinary circumstances.

The high connection of the parties, the address and declaration of the late earl to a Committee of Privileges when his pedigree was under proof in 1799, added to many other occurrences, tended to excite an unusual degree of interest in the case. Those who remember the sittings of the Committee upon the claim, could not fail to have noticed the very full attendance of peers during the session it was entertained, and it may be doubted, if such a numerous attendance was ever before or since given on any claim to a peerage.

The Committee, to which the petition was referred, met on the 4th March, 1811, when an address was moved to the Prince Regent, requesting the attendance of the Solicitor General, to protect the interests of any son or sons born after the marriage of 1796, which was accordingly complied with. The Attorney-General attending for the Crown, the counsel of the petitioner opened his case on the 7th March. The Committee continued the investigation under various adjournments until the 21st June, when the evidence and arguments of counsel on both sides closed. On the 28th June it was reported to the House that the Committee had "*resolved nemine dissente*, that the claimant had not made out his claim to the dignities claimed by his petition," which resolution was ordered to be taken into consideration on the 2nd of July, and that the Lords be summoned. Accordingly on the 2nd of July, the Lords met and the resolution of the Committee was affirmed "*nemine dissente*," since which judgment there has not been any Earl of Berkeley in the House.

Mr. Berkeley, the claimant of the earldom, having succeeded to the castle and manor of Berkeley under the will of the earl, has

recently presented a petition to His Majesty, praying to be summoned to parliament as Baron Berkeley, "in respect of his tenure of the barony of Berkeley, in like manner as the holders of that barony were summoned to parliament during the reigns of Kings Edward I., II., III., Richard II., Henry IV., V., VI., Edward IV., V., Richard III., and part of Henry VII., Philip and Mary, Elizabeth, James I., Charles I. and part of Charles II."

This petition, with the Attorney-General's report thereon, has been referred to the House of Lords.

The Claimant considers that the facts of his case establish,

- "1st. That Berkeley and Berkeley Hernesse, in the county of Gloucester, were anciently granted by the king to be holden of him in barony, and have been accordingly so holden.
- "2nd. That Thomas Lord Berkeley was summoned to parliament in 23rd Edw. I. ; that if he was so summoned in respect of a personal dignity, it was created either by writ or by letters-patent ; that the dignity of a baron was not created by letters-patent before 11th Ric. II. : and consequently, if Thomas and his successors, prior to 11th Ric. II., sat in respect of a personal dignity, it must have been a personal dignity conferred by writ, and as such, it would have descended to the heirs of the body of the person possessed of such dignity.
- "3rd. That the dignity in respect of which Thomas was summoned to parliament, 23rd Edw. I., as Baron de Berkeley, did not in the 5th Hen. V. descend to the heir-general of the said Thomas, nor did such heir assume the title.
- "4th. That the person seised of the baronial estates sat in parliament as Baron de Berkeley, in exclusion of the person, who would have been entitled to the baronial dignity, in case such dignity had been personal ; except during a period of sixty-two years, when the baronial estates were vested in the Crown, and the seignory consequently suspended.
- "5th. That such of the Barons Berkeley as were not in possession of the baronial estates, and who were summoned to parliament by writ, in and subsequent to the 14th Hen. VIII., were not considered as entitled to sit in the seat of the pre-

ceding Barons de Berkeley : but when they became seised of the baronial estates, they then resumed the ancient seat of their predecessors."

Upon the first and second of these propositions there can be no difference of opinion : and the facts—that, on the death of Thomas Lord Berkeley in 1417, a dispute arose about the right to Berkeley Castle ; that in the year in which his heir male, James de Berkeley, obtained possession of it, he was summoned to parliament ; and that there is no other evidence that the heir-general claimed the dignity than the assertion of Dugdale<sup>1</sup>, and the inscription on the tomb of the Countess of Shrewsbury<sup>2</sup> ; that on the death of William Marquess of Berkeley in 1492, who settled the castle on King Henry the Seventh and his heirs male, his brother and heir Maurice de Berkeley, who was then of full age, and survived him fifteen years, was never summoned to parliament, and was always described as a commoner ; that Maurice de Berkeley, son and heir of the said Maurice, was also deemed a commoner until he was summoned to parliament in the 14th Hen. VIII., and that when so summoned he was considered to be *created* a peer, and ranked as junior baron—certainly admit of the inference, that in part of the reigns of Henry the Fifth, Henry the Seventh, and Henry the Eighth, the barony was deemed to be attached to the tenure of Berkeley Castle. With respect to what took place on the subject in the instances of James de Berkeley, *temp.* Hen. V., and Maurice de Berkeley, and Maurice de Berkeley his son, *temp.* Hen. VII. and until the 14th Hen. VIII., however strong that inference may be, it is but *an inference* ; and it is important to observe, that there are, at least, two instances on record in which the heir male of a baron by writ was summoned instead of the heir-general<sup>3</sup>, though in neither could the question of *tenure* possibly have arisen ; and that in two cases it has been

<sup>1</sup> See page 322, *ante*.

<sup>2</sup> See pages 9 and 323, *ante*.

<sup>3</sup> Burghersh and La Warr. In the Burghersh case, Robert de Burghersh, who was not a baron by tenure, was summoned to parliament in the 32nd and 33rd Edw. I., and died in 1305, leaving Stephen his son and heir of full age, who was never summoned, and died in 1310 leaving Maud his daughter and heir, who was twice married and left issue by both husbands ; but in the 4th Edw. III., 1330, Bartholomew de Burghersh, the *third son* of Robert Baron Burghersh above men-

decided, that the writ to the heir *male* of barons by writ created *a new dignity*, without affecting the right of the heir-general to the old barony<sup>1</sup>, in both of which instances the descendants of such heirs male at this moment enjoy the barony created by those writs, whilst the representatives of the heirs-general possess the *original* baronies<sup>2</sup>. If this principle be applied to the Berkeley case (and unless the House admit that the tenure of Berkeley Castle, in the reign of Henry the Fifth, constituted the possessor a peer of parlia-

tioned, (Henry, the *second son*, being then Bishop of Lincoln,) was summoned to parliament. He continued to be regularly summoned until the 29th Edw. III., when he died, leaving Bartholomew his son and heir, who was summoned from the 31st to the 42nd Edw. III. He died in the 43rd Edw. III., when his daughter, Elizabeth, who married Edward Lord le Despenser, became his heir, among whose descendants the barony created by the writ of the 4th Edw. III. is in abeyance. Dugdale and other writers have erroneously considered that Bartholomew de Burghersh was the son of Stephen, and *grandson and heir* of the first baron instead of his being the *third son* of that person. The facts of the la Warr case are these:—Thomas West, 9th Lord, died s. p. m. 1554. His heirs at law were the daughters and co-heirs of Sir Owen West, his half brother; but in the proceedings on the dignity, *temp.* Elizabeth, his nephew William West, son and heir of Sir George West, younger brother of the said Sir Owen, was considered his lordship's heir, and his son was allowed the ancient barony, which has descended to the present Earl de la Warr; though, according to general practice and former as well as subsequent decisions, the barony created by the writ 27th of Edw. I. is now vested in the heirs of the above-mentioned Sir Owen, and the barony, which the present earl has inherited, was created by the patent to William West in 1570. See also cases of Deincourt and Burnell, which will be hereafter stated.

<sup>1</sup> Clifford and Strange.—*Cruise on Dignities*, pp. 225. 234.

<sup>2</sup> The Lord de Clifford has inherited the dignity created by the writ to Robert de Clifford in the 27th Edw. I. 1299, as his heir-general; but the barony created by the writ to Henry Clifford, son and heir apparent of Francis 4th Earl of Cumberland, which issued under the impression that the earl was possessed of the original Barony of Clifford, in the precedency of which he took his seat, has descended to the Duke of Devonshire, as heir-general of the said Henry Clifford. The Barony of Strange, created by writ to John le Strange in 27th Edw. I. 1299, is in abeyance among his heirs-general; but the barony created by the writ to James Stanley, son and heir apparent of William Stanley 6th Earl of Derby, which issued under the presumption that the earl was seised of the ancient Barony of Strange, is possessed by the Duke of Atholl as heir-general of the said James Stanley. The case of the Barony of Percy is also in point, for notwithstanding that Algernon Seymour, when summoned as Baron Percy in 1722, sat in the precedency of the ancient barony, there can be no doubt that he was not legally seised of it, and that he was then *created by writ* to a new barony of Percy.

ment, it cannot be otherwise. It will be seen that the barony created by the writ of the 23rd Edw. I. to Thomas de Berkeley descended to his half-general, Elizabeth Countess of Warwick, and is now in abeyance among her co-heirs: and that the writ to James de Berkeley in the 14th Hen. V. created a new dignity to him and the heirs of his body.

William de Berkeley, the son and heir of the said James, was summoned to parliament in the 10th Edw. IV., three years after his father's death, and continued to be summoned as a baron until called to higher honours. On his decease in 1492, without issue, his brother and heir Maurice de Berkeley was entitled to a writ to parliament as heir to his father, under the presumed creation of the 14th Hen. V., even if the original barony of the 23rd Edw. I. was vested in the descendants of the Countess of Warwick. Though he lived for fifteen years, and was succeeded by his son and heir in 1507, they were both deemed to be summoned until the 14th Hen. VIII. 1547, a period of thirty years, during which time the manor and castle of Berkeley were in the Crown.

It is not attempted to be denied that, viewed without reference to other cases, these circumstances support the opinion that the reason why Maurice de Berkeley, the brother and heir of the Marquess, and his son Maurice, were not summoned between the 14th Hen. VII. and 14th Hen. VIII. and why the last mentioned Maurice, when summoned in the 14th Hen. VIII. ranked as junior baron was, that they were not seized of Berkeley Castle: but it is important to remember, when examining the question, that there are many examples of one, two, three, four, and even five generations of the heirs of barons by writ not being summoned in parliament, though no similar explanation of the cause can be given, the heirs of many of whom were afterwards summoned in the dignity in which the persons passed over were respectively entitled.

A strong doubt, as to whether the non-possession of Berkeley Castle was the cause of the omission of writs to Maurice de Berkeley and to his son until the 14th Hen. VIII., and of the second Maurice, when summoned in that year, being placed as junior baron, arises from finding that the next two Barons Berkeley enjoyed the precedence

1 See note, page 237. *ante*.



DATE

26 JAN 1856

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NAME

W. de Berkeley

they were not possessed of Berkeley  
1st proposition—

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Berkeley as were not in possession of  
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Thomas Lord Berkeley was summoned  
at he was frequently present in parlia-  
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ron on the lists in the Journals, are un-

noticed in the Printed Case.

As these circumstances afford grounds for believing that whatever  
may have been the idea in the reign of Henry the Fifth or Henry  
the Seventh, it was not considered that the ancient Barony of Berke-  
ley was attached to the tenure of Berkeley Castle in the reign of  
Henry the Eighth, it is desirable to inquire in what manner the  
letter of the Chief Baron and the two other persons to whom Mau-  
rice Lord Berkeley applied for advice bears on the point.

It is manifest from that letter that Maurice de Berkeley consi-  
dered that he was entitled to the ancient Barony of Berkeley;  
and so strong was his lordship's feeling on the point, that it

<sup>1</sup> See page 5. In the printed pedigree, the first Thomas is however said to have  
been summoned to parliament in the 21st Hen. VIII., but no notice is there taken  
of the writ to his son, the second Thomas, though he is called Lord Berkeley in the  
26th Hen. VIII.

would appear he hesitated to accept of a new creation, and that many peers wished him to contend for the place in parliament of the old barons. Though his legal advisers beg him to accept of the honour, they do not deny his right to the old barony; they never once advert to the tenure; and they counsel him to accept of it, and "*at a more convenient time*" to seek for the precedence to which he thought himself entitled.

The conclusion is therefore inevitable, that in the 14th Hen. VIII. neither the Chief Baron, nor those who concurred in his opinion, nor the many peers to whom Sir John Fitz-James alludes, nor Lord Berkeley himself, thought that the ancient dignity was attached to the tenure of Berkeley Castle; for if such had been the case, what claim had Maurice de Berkeley to any other precedence than he derived from the writ of the 14th Hen. VIII.? But allowing that he and his friends were wrong, and that though they believed he had a right to the ancient barony, the law was as the present Petitioner contends, is it likely that his counsel, to whom he applied for legal advice, one of whom was then Chief Baron of the Exchequer, and three years afterwards became Chief Justice of the King's Bench, would have been as ignorant as themselves, and that they would not have said, "My lord, you are mistaken: you have no claim to any other place in parliament than such as you will derive under this writ, because the ancient dignity to which you think yourself entitled is inseparable from the tenure of Berkeley Castle, of which you are not possessed. Do not hesitate, therefore, to accept of the honour which His Majesty has conferred on you?"

Whether Lord Berkeley did afterwards claim that precedence has not been ascertained, but it is improbable that he ever took his seat in parliament, as he died at Calais on the 12th September, 1523, only four months after the date of Sir John Fitz-James's letter, without issue, when, if the barony of which he was possessed was held to have been a new creation, it became extinct.

His brother Thomas de Berkeley was his heir, but he had no right to a writ of summons, if the ancient barony was attached to the tenure of the castle; nor could he claim one under the creation by the writ to his brother, because that dignity terminated on his death. Notwithstanding these circumstances he received a writ of



summons to the *very next* parliament, tested on the 9th August, 21st Hen. VIII. 1529, and addressed to him as "Thomas Berkeley de Berkeley, Chivaler:" but as the Journals of that year are lost, no *evidence* can be produced from them to show in what precedence he sat. It appears however, from a MS. in the College of Arms, that on the 3rd of November following, he made his first entry in parliament, that he paid his fee of twenty shillings on that occasion, and that instead of being placed according to the date of his writ, he ranked in the precedence of the original barony, a fact in direct contradiction to the opinion that the dignity was attached to the tenure of Berkeley Castle, because that territory was still in the Crown. Lord Berkeley died on the 28th January, 24th Henry VIII. 1533; and in January, 25th Henry VIII. his son and heir Thomas de Berkeley was summoned to parliament by the same description as his father. He never possessed Berkeley Castle; and if the proof which has been adduced that his father was allowed the old barony be objected to, and it be said that he sat as junior peer, it is important to inquire where his son was placed when he took his seat in the 25th Hen. VIII.; because, if the ancient barony was attached to the tenure of Berkeley Castle, he had no right to a higher precedence than was given him by the creation of his father in the 21st Hen. VIII. For the 25th year of Hen. VIII. the Lords' Journals are preserved, hence the evidence on the point is conclusive, as the name of Lord Berkeley regularly occurs in them, and he is frequently marked as having been present. In every instance his name stands as the third baron on the Roll, namely, between Lord Zouche and Lord Morley, which clearly proves that he did not sit in the precedence which would be given, either by the writ directed to his father, or by that to his uncle, in the 14th Hen. VIII. It was not however the precedence which may be supposed to have belonged to the creation by the earliest writ to his ancestor in the 23rd Edw. I. 1295, for that writ would have entitled him to sit above Lord Zouche, whose ancestor was not summoned to parliament until the 2nd Edward II. 1307; and the precedence given to Lord Zouche above Lord Morley is no less extraordinary, for the first Lord Morley was summoned in the 28th Edw. I. 1299. Although Lord Zouche

was placed above him, it is certain that he sat in the ancient barony; for on no other grounds could he have been placed above Lord Morley, and as the third baron, and which appears to be the same place that had been given to his father in the 21st Hen. VIII., namely, next below Lord Zouche<sup>1</sup>. Lord Audley, who sat under the doubtful writ of the 25th Edward I. and was in that and subsequent parliaments placed as the first baron, seems to have been improperly placed above him; but the cause of this circumstance cannot be ascertained.

Lord Berkeley died in the 26th Henry VIII. and was consequently never again summoned to parliament. Henry, Lord Berkeley, his son and heir, was not born until a few weeks after his father's death, and did not become of age until October, 1555, 2nd & 3rd Philip and Mary: he was present in parliament in the 4th & 5th Philip and Mary; and it is said, in the Printed Case, that he "being seised of the baronial estates sat in the House with reference to the ancient and territorial barony of Berkeley;" but it is certain that he did *not* enjoy a higher precedence than his father, or grandfather, neither of whom "was seised of the baronial estates."

These facts prove, that, whatever may have been the place assigned to Maurice Lord Berkeley, in the 14th Henry VIII. or to his brother Thomas Lord Berkeley, in the 21st Henry VIII. questions which, from the loss of the Lords' Journals, cannot be *positively* decided, Thomas Lord Berkeley was, in the 25th Henry VIII., notwithstanding his not being seised of the castle of Berkeley, *placed in precisely the same precedence as that which was given to his son, after he obtained possession of that castle*, and consequently, whatever may have been the principle which prevailed between the period when the castle was alienated and the 25th of Henry VIII. the ancient barony was not in that year deemed to be attached to the tenure of the castle: nor, for the reasons which have been mentioned, does it appear that such was the opinion of Maurice Lord Berkeley, his counsel, or the Chief Baron, in the 14th Henry VIII. Nothing, therefore, but presumptive evidence can be adduced, to show that the alienation of Berkeley Castle, in the reign

<sup>1</sup> See page 326, ante.

of Henry the Seventh, prevented the brother and son of the Marquess of Berkeley from inheriting the ancient barony, whilst, on the other hand, positive evidence is extant, that the precedence of the ancient barony<sup>1</sup> was possessed by their heirs, *nineteen, if not twenty-three*, years before the castle was restored to the family.

It has been already said, that in May, 1661, George, then Lord Berkeley, petitioned His Majesty to be allowed his place in parliament above and before Lord la Warr, grounding his claim on the barony being by tenure of the Honour of Berkeley<sup>2</sup>. The precedence of the barony of Berkeley under the writ of 23rd Edw. I. seems to be above that of La Warr, which was created by the writ of 6th February, 27th Edward I., and the claim was not grounded on that circumstance, probably because, if it was admitted to be a barony by tenure, it would have given its possessor a precedence above every baron who was not then seised of such lands as constituted his ancestors barons of the realm before the reign of Edward the First. No resolution appears to have been made on this petition; which is remarkable for the omission of the proceedings relative to the barony in the reign of Henry V., and of any allusion to the place in which Thomas Lord Berkeley sat in the 25th Henry VIII. Though he renewed his claim in 1670, and was heard by counsel, he did not establish his pretensions; and the inference is, that if it had been generally known that he was a baron by tenure and not by writ, his case would have been so clear, that instead of its being the subject of discussion for twelve or thirteen years, and ultimately *without success*, his right

<sup>1</sup> Although the exact precedence of the ancient barony was certainly, according to present rules on the subject, *above* the barons *below* whom Thomas Lord Berkeley was placed in the 25th Henry VIII., still the words used in the text are justified by its being the precedence which was allowed to his descendants, who were seised of Berkeley Castle. Antecedent to the 1st of Henry VIII. there are no means of ascertaining correctly the precedence given to peers: the Journals between the 7th and 25th Henry VIII. are not extant; and between the 1st and 7th of that reign no Baron Berkeley was summoned to parliament, hence the earliest entry of a Baron Berkeley in the Journals is in the 25th Henry VIII.

<sup>2</sup> *Cruise on Dignities*, p. 45; *Lords' Journals*, vol. xi. p. 257. The material facts that the brother and nephew of the said Maurice de Berkeley were summoned to, and sat in, parliament with the precedence of the ancient barony were not stated in that petition.

would have been undisputed after the first hearing. It is worthy of notice, that notwithstanding Lord Berkeley, in 1670, claimed precedence of the Barons Abergavenny, Audley, and La Warr, he admitted the pre-eminence of the Duke of Norfolk, as Lord Mowbray; but it is impossible to explain upon what grounds. The family of Mowbray were barons by tenure antecedent to the 23rd Edward I., in which year Roger de Mowbray was summoned to parliament; but the tenure of Abergavenny Castle also constituted its possessors barons of the realm, and the ancestors of Lord Audley were likewise barons by tenure, so that Lord Berkeley had no claim by tenure which Abergavenny and Audley did not equally possess; and as the date of the first writ to Mowbray was the same as that to Berkeley, why should he concede the pre-eminence of that barony, if, as he contended, he and his ancestors had been barons by the tenure of Berkeley Castle from the reign of Richard the First? If then the proceedings on the point of precedence in the time of Charles the Second prove any thing, they rather make against, than support, the present petitioner's case, because they show that the pretensions of the Lord Berkeley were not admitted. After the creation of the Earldom of Berkeley, nothing occurred to throw any light on the question, the heir male of the first earl having always been his heir general.

Upon the subject of the precedence of the Lords Berkeley, the following remarks occur in the Printed Case.

"The petitioner's view of the subject is materially supported by the discussions which have from time to time taken place on claims to precedence *between* the Barons de Berkeley and other barons, summoned to parliament at as early a period as the reign of Edward I.

"The personal dignity of Henry being derived under the writ of summons to Thomas (the 5th), his grandfather, in the 21st Henry VIII., he was not entitled, in respect of such creation, to precedence of barons of an earlier date, and could have had no other title to precedence, unless he could have derived it under the summonses to the former Barons de Berkeley by tenure<sup>1</sup>. And the decision,

<sup>1</sup> It has been proved that the *father* and *grandfather* of the said Henry Lord Berkeley both sat in the precedence of the ancient barony, though neither was possessed of Berkeley Castle.

by which the Lords Willoughby d'Eresby and Delaware were placed above the Lords Berkeley in the 39th of Elizabeth, has been ascribed to their (the Lords Berkeley) not being seated according to their claim of a barony by tenure.

" It may be admitted that the Lords Berkeley, on being placed below Lords Willoughby d'Eresby and Delaware, did not establish their claim to the particular seat, to which they considered themselves entitled as barons by tenure : but their failure in their claim to precedence of Lord Willoughby d'Eresby and Lord Delaware by no means shows, that they were not regarded as barons by tenure ; for, upon the point of precedence, there does not appear to have been any distinction between personal or territorial dignities.<sup>1</sup> The Lords Willoughby and Delaware may have been summoned and sat in parliament before the Lords Berkeley, and, as the seniors of Lords Berkeley, may have succeeded in their claim to precedence of the Lords Berkeley ; and whether their pretensions were founded on a personal or territorial dignity, the effect was the same. The true and only question on the point of precedence is, with reference to the date of the creation, or of the summons and actual sitting in parliament. If the Lords Berkeley claimed precedence of the Lords Delaware, the Lords Delaware may have alleged, that they were summoned to the great council, holden 22nd Edward I., which (whether correctly or not) appears

<sup>1</sup> The date of the first writ of summons to the ancestor of Lord Willoughby de Eresby, was the 26th of July, 7th Edward II. 1313 ; and of the writ to the ancestor of Lord la Warr, 27th Edward I. 1299, but the same person was summoned to a council in the 22nd Edward I. 1294, which in the *Roos case* was deemed a writ of summons to parliament : and the first Lord Willoughby of Eresby may be considered to have been summoned in right of his wife Alice, eldest daughter and co-heir of John Beke, who was summoned to parliament in the 23rd Edward I., on the same occasion as the first Lord Berkeley, by writ, whose ancestors were as much barons of the realm *by tenure* as the ancestors of Lord Berkeley. It is therefore clear, that whether in relation to tenure or writs, the Lords Willoughby of Eresby may have been properly placed above the Lords Berkeley ; but the fact that the Lord la Warr, whose ancestors were not barons by tenure, was placed above Lord Berkeley, admits of a strong inference that the latter was deemed to be entitled to no higher precedence than that of the writ of the 23rd Edward I., and that the Lords La Warr sat under the writ of the 22nd Edward I. When the claim for precedence was urged by Lord Berkeley, in 1660 and 1671, the barony of Willoughby of Eresby was merged in the earldom of Lindsey.

to have been considered as a parliament ; and consequently were entitled to precedence of the Lords Berkeley, who were not, so far as appears, summoned to any regular parliament before the 23rd Edward I. ; and as to Lord Willoughby d'Eresby, he may have shown that he had also the barony of Bec, a barony of the 23rd Edward I., and, probably, of a much earlier date. But supposing the precedence given to Lords Willoughby d'Eresby, Delaware, and others, to have been rightly or wrongly given, it would still be necessary to account for that allowed to the Lords Berkeley ; for if they have precedence of any baron of the reign of Edward I., or prior to 11th Richard II., they must have had it in respect of their barony being a barony by tenure, inasmuch as if their barony had been a personal dignity prior to that period, it must have been conferred by writ ; and, as already shown, was not in the Barons de Berkeley, who were summoned to parliament subsequently to the 4th Henry V., but in the Countess of Warwick and her descendants<sup>1</sup>. That the Barons de Berkeley had precedence of Lord Dacre, who was summoned to parliament 28th Edward I.<sup>2</sup>, is admitted, but how could their claim to this precedence be made out, if the Baron de Berkeley, who was summoned 23rd Edward I., was stated to have been summoned in respect of a personal dignity ? the answer to such a claim of precedence by a Baron de Berkeley, subsequently to 4th Henry V., would have been, the personal dignity is in the Countess of Warwick or her descendants, and not in the claimant ; and this answer must have been conclusive. Such a claim to precedence, therefore, could only be supported by showing, that the dignity was territorial and independent of heirs *in*ip,

<sup>1</sup> Whether correctly or not, there can be no doubt that the descendants of James de Berkeley, who was summoned in the 9th Henry V., were considered, after the 14th Henry VIII., and perhaps even in that year, to have inherited the dignity created by the writ of the 23rd Edward I. But it was shown in page 332, *ante*, that the anomaly of the heir *male* of barons by writ being summoned instead of the heir-*general*, was not confined to the barony of Berkeley, and also that the fact of barons being seated in the House in a higher precedence than that to which they were entitled, does not preclude a claim on the part of the heirs-general of the baronies, in the precedence of which they improperly sat.

<sup>2</sup> Lord Dacre was not summoned to parliament until the 15th May, 14th Edward II., as his wife was the daughter and sole heiress of Thomas Baron Multon of Gillesland, who was summoned in the 1st Edward II., and whose ancestors were barons *by tenure* : her descendants were, probably, allowed the precedence of that writ.



except so far as the lands were liable to be affected by such succession: and on this ground, the decisions that place the Lords Berkeley above Lord Dacre and other barons of about the same period (28th Edward I.) may be rested and defended. The Lords Berkeley may have failed in establishing their claim to precedence of the Lords Willoughby and Delaware; but they would not have succeeded in establishing their claim of precedency of Lord Dacre and others, otherwise than by the recognition of their dignity as a territorial dignity, and of a date at least prior to that of Lord Dacre, 28th Edward I., of Lord Ferrers of Groby, 25th Edward I., or of Lord Morley, 28th Edward I.; the precedence of all of whom, and who were ancient barons, had been considered by the House on different occasions<sup>1</sup>.

“ It may be proper to observe, that, upon questions of precedency, no reliance can be had on the order, in which the names of peers to be summoned to parliament appear in the entries of the writs of summons; nor can much reliance, if any, be had on the order, in which their names appear on the Journals of the House, prior at least to 38th Henry VIII.<sup>2</sup>; the coronation rolls and list of regal processions appear to furnish the most accurate, though not always complete, information upon the subject; such information is not always complete, as the peer may have been an infant, or absent from illness, or other cause; but where it appears in a coronation roll, or a description of a regal procession, that the Baron de Berkeley walked after Lords Morley and Dacre, and before Lords Zouch, Audley, and Abergavenny, as, in the order of proceeding, the junior lord walks first, it may be safely concluded, that Lord Berkeley was junior to Lords Zouch, &c., and senior to Lords Dacre, &c. Such information may be collected from a book in the Heralds College, containing the description of a procession in the 5th Queen Elizabeth, and also from Mills's Catalogue of Honour, which gives an account of another procession of that queen in the 27th year of her reign. Another book is also in the Heralds College, from which most useful information upon this point may be

<sup>1</sup> See note 1, last page.

<sup>2</sup> It is admitted that writs of summons afford no evidence of precedency; but the Journals of the House of Lords, in the period in question, may be relied on, as showing the rank which peers were deemed to possess among themselves. Some remarks on the subject of precedency will be found in the *Additional Notes*.

obtained, it containing a list of the peers in the 18th year of James I. (1621), with the dates of their respective creation and first summonses to parliament. In that list, George, the grandson of Henry Lord Berkeley, is named, and the date of his barony is stated to be 23rd Edward I.; and in a list, prepared by Garter King at Arms, of the peers in the year 1660, (the date of the restoration of King Charles II., and re-establishment of the House of Lords,) George Lord Berkeley is placed between Lord Delaware and Lord Morley<sup>1</sup>. This list is amongst the records of the Lords' House of Parliament. But, though Lord Delaware was ranked above Lord Berkeley, it appears that, in the reign of Charles II., Lord Berkeley preferred his petition, claiming precedence of Lord Delaware. The consideration of this petition appears to have been adjourned from time to time, and was finally disposed of by Lord Berkeley's being created Viscount Dursley, and he having been afterwards created Earl of Berkeley<sup>2</sup>. The Lords Berkeley have from that period sat in parliament as earls; and no question has been raised that could involve the consideration of their claim to the dignity of barons by tenure, in respect of their seisin of the castle, &c. of Berkeley, such seisin having been constantly in themselves."

The descent of the barony will be best shown by the subjoined Pedigree.

<sup>1</sup> It appears from the original MS. account of the proceedings previous to, and at the coronation of Charles the Second, under the hand of Sir Edward Walker, Garter, now in the possession of Charles G. Young, Esq., York Herald, that "the barons in proceeding from the Tower walked according to their antiquity, the juniors first: the six senior ones were thus placed:—

Francis Lennard Lord Dacre.	Thomas Parker Lord Morley.
George Berkeley Lord Berkeley.	Charles West Lord la Warr.
James Tuchet Lord Audley.	John Neville Lord Abergavenny."

When the homage was performed by the peers, Lord Audley did homage on behalf of himself and the rest of the baronage, hence it would appear, that Lord Abergavenny was not present, as Sir Edward Walker gives a list of the names of those present at the performance of that part of the ceremony, and the order of the barons is thus:—James Lord Audley, Charles Lord la Warr, *George Lord Berkeley*, Thomas Lord Morley, Francis Lord Dacre, Conyers Lord D'Arcy.

<sup>2</sup> Lord Berkeley was not created Viscount Dursley until 1679, *eighteen years* after he presented his *first*, and *six years* after the latest notice of any proceedings relative to his *second* petition for precedence. He was raised to the earldom of Berkeley by the *same* patent by which he was created a Viscount.

## DESCENT OF THE BARONY OF BERKELEY.

Thomas de Berkeley, a Baron by Tenure of the Castle and Honour of Berkeley; summoned to Parliament from 23rd Edw. I. to 14th Edw. II.; sat in Parliament 29th Edward I., ob. 1321.

Maurice de Berkeley, s. and h.; summoned to Parliament *vitâ patris*, from 2nd Edw. II. to 14th Edw. II. ob. 1326; but he is not recorded to have sat in Parliament; ob. 1326.

Thomas de Berkeley, s. and h.; summoned to Parliament from 9th to 34th Edw. III. and sat in various Parliaments; ob. 1361.

Maurice de Berkeley, s. and h.; summoned to Parliament from the 36th to 42nd Edw. III.; he is not recorded to have sat in Parliament; ob. 1368.

Thomas de Berkeley, s. and h.; summoned to Parliament from 5th Rich. II. to 5th Hen. V. and sat in various Parliaments; ob. 1416, s. r. m. then seised of Berkeley Castle.

James de Berkeley, 2nd son; ob. *vitâ fratris*.

Elizabeth, dau. and sole heir, married Richard Beauchamp, Earl of Warwick.

James de Berkeley, inherited the Castle of Berkeley as heir male, summoned to Parliament from 9th Hen. V. to 1st Edw. IV. and sat in Parliament; ob. 1463.

William de Berkeley, son and heir; summoned to Parliament from 6th to 12th Edw. IV.; created Viscount Berkeley, Earl of Nottingham, and Marquess of Berkeley; settled Berkeley Castle on Hen. VII. in 1487, and his issue male; ob. 1492, s. r.

Maurice de Berkeley, brother and heir; he was not possessed of Berkeley Castle, and was never summoned to parliament; ob. 1506.

Maurice de Berkeley, s. and h. was not possessed of Berkeley Castle; summoned to Parliament 14th Henry VIII. and ranked as junior Baron; ob. 1523, s. r.

Thomas de Berkeley, brother and heir; was not possessed of Berkeley Castle; summoned to Parliament 21st Hen. VIII., and appears to have sat in the precedence of the ancient barony; ob. 1533.

Thomas de Berkeley, s. and h.; summoned to Parliament 25th Henry VIII. and sat on every occasion in the precedence of the ancient barony, though he was not possessed of Berkeley Castle; ob. 1534.

Henry de Berkeley, s. and h. not of age until 1555; succeeded to the possession of Berkeley Castle in 1553; sat in Parliament in 1557, but in the same place as that in which his father sat.

*A quo* Augustus Frederick, 5th Earl of Berkeley, who devised Berkeley Castle to the claimant.

It is said in the Petitioner's Case, that

“ The question upon the preceding state of facts, is not, whether a person, holding a portion (not being the caput) of a barony, is intitled to a seat in the Lords' House of Parliament ;—nor is it, whether a person seised of an entire barony, or of the caput baroniæ, in respect of which no individual ever has been summoned to parliament, could now maintain a claim to be so summoned ;—nor is it, whether a territorial dignity, which has long been discontinued, should now be revived : but the question is, whether the petitioner is not entitled to the continuance of the privilege of being summoned to parliament, in respect of the barony of Berkeley, in like manner as the holders of that barony were summoned to parliament during the reigns of Kings Edward I. II. III., Richard II., Henry IV. V. VI., Edward IV. V., Richard III., and part of Henry VII., Philip and Mary, Elizabeth, James I., Charles I., and part of Charles II. ?

“ In so propounding the question, the objection supposed to arise from the divisibility of a barony is wholly excluded ; and the objections, which are supposed to attach to the allowance, for the first time, of such a privilege to those entire baronies, or heads of baronies, that do not at any time appear to have enjoyed it, or to the revival of dignities, which have been long since abandoned, are at least materially weakened.

“ The petitioner's claim, so founded, is very much the same as that of John Fitz Alan to the title of Earl of Arundel, and that of Neville to the title of Lord Abergavenny. It proposes no change in the constitution of the Lords' House of Parliament, but merely the reinstatement of one of its most ancient members, the Baron de Berkeley, as a baron by tenure.

“ In this view of the case, the usage of parliament constituting not only the law of parliament, but the best evidence of the right of individuals to be members of it ; it will not be necessary to inquire into the origin of the right of summons of the Barons de Berkeley, but merely to show, that they were summoned in respect of their baronial possessions. The documents referred to establish, as the petitioner submits, the fact, that the Barons de Berkeley were, during the reigns of Kings Edward I. II. and III., Richard II., Henry IV. V. and VI., Edward IV. and V., Richard III., and

part of Henry VII., summoned to parliament in respect of their baronial possessions; and that from 4th Philip and Mary to 31st Charles II. (being so summoned) they had precedence in the Lords' House of Parliament as barons, with reference to the summons of No. of the baron, who was summoned in the 23rd Edward I. The documents referred to also show, as the petitioner submits, that no person was summoned to parliament as Baron de Berkeley by tenure of the latter part of the reign of Henry VII., or during the reigns of Henry VIII.<sup>1</sup> and Edward VI.<sup>2</sup>, because, during that time the baronial possessions were vested in the Crown: and the documents also show, that the cesser of the writs of summons of the Barons de Berkeley, after 31st Charles II., was not occasioned by any extinction or abandonment of that dignity, but from the seizure of the persons seised of the baronial possessions, and their exclusion from the Lords' House of Parliament as Earls of Berkeley.

It may be observed, that the principles, upon which the decisions in the cases of the Earl of Arundel and of the Baron of Abergavenny are supposed to have proceeded, have been questioned by very high authority, and materially broken in upon by the subsequent decision in the case of Lord Fitz Walter.

"With respect to the allowance of the claim of the Earl of Arundel, the petitioner submits, that the distinct recognition by the act of 3rd Charles I. c. 4., of the doctrine upon which that decision proceeded, has given to it an authority, that nothing short of legislative declaration can weaken.

"As to the allowance of the claim of Sir Edward Neville to the barony of Abergavenny, though it has not the sanction of equal authority as that of the earldom of Arundel, yet, as a decision in the reign of King James I., who was very adverse to such claims, it is, from that circumstance, intitled to more than ordinary weight. But it has been observed, that this decision was founded on a compromise or amicable arrangement; upon which the petitioner begs to remark, that the barony was claimed by Sir Edward Neville, as

<sup>1</sup> It has been proved in pages 326, 327, ante, that two persons were summoned to parliament, and sat in the precedence of the 23rd Edward I., in the reign of Henry the Eighth.

<sup>2</sup> During the reign of Edward the Sixth the Lord Berkeley was a minor.

a barony by tenure, and as such, he must have obtained it, or he could not have been intitled to that precedence, which was allowed him by the House. For as a personal dignity, it was neither in him, nor in his competitor, Mary Fane ; but in the heir at law of John Earl of Pembroke, who appears to have been Reginald Grey, and who, however disposed he might have been, could not with legal effect release it, as a personal dignity, to any one ; so that, if it was a personal dignity, it is now in the heir of Reginald Grey. But from the period of the decision, no question has ever been raised in the House as to its propriety.

“ It has been also observed, that on the claim to the barony of Fitz Walter in 1669, the counsel of Robert Cheeke, who opposed the claim of Benjamin Mildmay (afterwards Lord Fitz Walter), affirmed, that the barony was a barony by tenure, and ought to go along with the land, which the petitioner, Benjamin Mildmay, denied, and offered to argue upon the same ; upon which both parties being ordered to withdraw, the nature of a barony by tenure being discoursed, it was found to have been discontinued for many ages, and not in being, and so not fit to be revived, or to admit any pretence of right and succession thereupon, and that the pretence of a barony by tenure being declared for weighty reasons not to be insisted on. In the previous proceedings, which took place before the House of Lords in relation to these claims, (*Journals*, vol. 12, p. 188. 227.), the barony of Fitz Walter is called a ‘ barony in fee,’ and treated as an ancient personal dignity descendible to heirs general ; and all the arguments, respecting the merger of the dignity in the earldom, must have proceeded on the ground that it was a personal dignity ; nor did Mr. Cheeke show or allege that he held any lands that could constitute such a barony, or that ever formed a part of the territorial barony of Fitz Walter. The petitioner further submits, that the minute of council is evidently drawn up with much inaccuracy. In the deduction of the pedigree of Mildmay, the fact, that the Lady Frances Mildmay was the daughter of Anne, the second wife of Henry Earl of Sussex, is wholly omitted, though upon this fact depended one of the most material points in the case, viz. whether the half-blood was any impediment to the

descent of the dignity<sup>1</sup>; and from the general perplexity of the language employed throughout the document, there is great difficulty in ascertaining the construction which it ought to receive. But whatever respect may be due to this opinion of the privy council, the petitioner submits, that it is not intitled to prevail, if at variance with the sound construction of an act of parliament, then and still in force; and it appears from the act 12th Charles II. c. 24. § 11, that nothing in that act was 'to infringe or hurt any title of honour, feudal or other, by which any person had or might have right to sit in the Lords' House of Parliament, as to his or their title of honour, or sitting in parliament, or the privilege belonging to them as peers.' The only feudal right to a seat in the Lords' House of Parliament must necessarily be founded in tenure, and the lords spiritual were then sitting in the Lords' House of Parliament in respect of their temporal baronies by tenure, as was the Baron of Abergavenny in respect of his land barony; and the Baron de Berkeley was sitting, above many other barons, in respect also of such tenure. To give somewhat of weight to the doctrine stated in Fitz Walter's case, it has been observed, that Sir Matthew Hale, a person deeply read in the records of parliament, was one of the judges who attended the privy council on that occasion; but it by no means follows that he concurred in the doctrine stated (if intended to exclude all claims to a seat in the Lords' House of Parliament in respect of baronial tenure); and it is rather to be supposed that he did not, as in a MS. note of that eminent judge the following observation appears:—'But if it were a feudal title of honour, as the earldom of Arundel or barony of Berkeley, there *possessio fratris* should hold well, because the title is annexed to the land.' 1 Inst. 15. Hargrave's note. The petitioner refers to this note, not merely to show, that in the opinion of that learned person a title might be annexed to land, but also to show, that the

<sup>1</sup> "The passage stands thus, the words in Italics, or others to the like effect, *having been left out*:—'Henry had two wives; by the first he had Thomas Earl of Sussex, who died without issue, and Henry Earl of Sussex, who was the father of Robert Earl of Sussex, who died also without issue, and [by the second] the Lady Frances, wife of Sir Thomas Mildmay, Knight.' Lords' Reports, App. III. p. 26, and Collins, p. 287."

barony of Berkeley was regarded by him as a title of that description.

“ It may be useful to consider, whether this saving clause in the Act does not allow of a more limited construction, and, if the petitioner might presume to hazard a conjecture as to the ‘ title of honour, feudal or other,’ by which any person had or might have right to sit in the Lords’ House of Parliament, he would submit, that it was such title of honour, in respect of which the holder of the barony had been at some time summoned to parliament, and that this saving was not intended to include claims, founded on the mere seisin of baronial lands, of which no holder of such lands had ever been, before the passing of the Act, summoned to parliament. For though the legislature, whilst abolishing the burthensome incidents of tenure, may have thought it an act of justice to preserve the privilege of a seat in parliament to individuals, who had performed the service of the tenure, yet they might not think that they were required to preserve the privilege to those, who had, up to that period, never performed the service.

“ With reference, therefore, to the present claim, no cases can be more distinguishable, than the petitioner’s and that of Mr. Cheeke. The one claims the privilege, as in continuance of ancient and almost invariably continued usage ; the other insisted on the privilege, without adducing, so far as the petitioner can trace, evidence of even the possession of any lands, that could constitute a barony by tenure.”

Upon this statement the following observations arise :—

*First*, that the proceedings relative to the barony in the reigns of Henry the Fifth, Seventh, and the early part of that of Henry the Eighth, admit only of an *inference* in favour of the petitioner’s view of the subject ; and that every fact connected with it in, and subsequent to, the 14th Hen. VIII. justify the belief that the barony was not considered to be attached to the possession of Berkeley Castle ; excepting that the Barons Berkeley since the 9th Hen. V. ought not to have enjoyed a higher precedence than was given by the writ of that year. However important the circumstance, that the Lords Berkeley have enjoyed the precedence of the 23rd Edw. I. may



appear, it is a sufficient proof that they did not derive it from the tenure of the castle, that two barons as early as the reign of Henry the Eighth possessed the same precedence, who were not seised of that territory; that for the reasons which have been adduced it seems that in the 14th Hen. VIII. neither the heir of the family, nor his legal advisers, entertained any such opinion; and that when a claim to a higher precedence was made on that ground, in the years 1660 and 1670, though the point was frequently argued, and the then Lord Berkeley manifestly took every possible pains to establish it, he did not succeed.

*Secondly*, that with respect to the claim to the earldom of Arundel and to the barony of Bergavenny, it will appear that they are not analogous to the petitioner's case, and that they by no means prove that dignities by tenure were considered to exist in this country at any period subsequent to the reign of Edward the First.

*Thirdly*, the Act 3 Car. I. c. 4, by which the earldom of Arundel and other dignities were settled on the Earl of Arundel, related to these dignities only; and it neither established any doctrine, nor recognised any principle, which can justify a claim in consequence of the tenure of other lands. Of the other dignities mentioned in that Act, namely, the baronies of Maltravers, Clun, Fitz-Alan, and Oswaldestre, it is material to notice that Maltravers was never a barony by tenure, but originated in a writ of summons to John Maltravers, in the 4th Edw. III., of which person the Duke of Norfolk was sole heir. The castle of Oswaldestre and the territory of Clun were possessed by the family of Fitz-Alan, and by the tenure of one or both they were barons of the realm; but no individual was ever summoned to parliament as a baron by the title of Fitz-Alan, Clun, or Oswaldestre, nor were there any barons by tenure of the names of Clun or Oswaldestre; so that the statute in question must be deemed to have created two of those dignities, even if it be held that it revived, instead of created, that of Fitz-Alan; and notwithstanding the recital in that Act there is cause to believe, that in the latter part of the reign of Henry the Third, and until the 23rd Edward I., the tenure of Arundel Castle did not constitute its possessor Earl of Arundel.

The remarks which are about to be submitted on BARONIES BY TENURE will contain the facts of the Arundel, Fitz-Walter, and Abergavenny cases, with some observations tending to prove, that subsequent to the 23rd Edw. I. the tenure of lands by barony did not give their possessors a right *ex debito justitiæ* to a writ of summons to parliament as a peer of the realm; and that there are two very important resolutions of the House of Lords, not noticed in the Claimant's Case, which form an obstacle to its success, and which it is difficult to believe can be surmounted.

It is scarcely necessary to observe that after the Conquest all dignities were attached to the possession of certain lands, which, agreeable to the feudal system introduced into this country by the Normans, was held immediately of the King, upon condition of performing certain honorary services, and which was called a *Fiefdom Nobile*, and conferred the rank of the peerage on the individual to whom it was granted. The services by which these lands were held chiefly consisted of attending the sovereign in war with a certain number of knights, and likewise of attending his great councils or parliaments. The number of knights to be provided by each baron depended on the conditions annexed to the grant, and according to that number he was said to be possessed of so many "knights' fees;" that is, his lands were nominally divided into certain divisions, to the tenure of which was appended the duty of providing a knight completely armed for the field whenever the King commanded his attendance.

Selden considers that the lands which were conferred by William the Conqueror on his followers descended to their posterity, and who consequently were deemed to form the baronial body of the kingdom; but in the reign of John, from many having alienated portions of their possessions, a great part of them became so reduced, as to cause such of the barons as retained all the lands granted to their ancestors to obtain a law by which *they only* should in future be styled *barons*, and all the rest merely *tenants in chief*, or *knights*; but because the name of *baron* could not be wholly taken from them, the addition of *maiores* was given to the most powerful barons, and that of *minores* to the others. From that period to the reign of Henry the Third, the right of sitting in the legislative assemblies appears to have been confined to those persons who, from

possessing entire baronies, were styled *barones majores* ; but under that monarch it has been held that this practice ceased, and that no person was then considered to be entitled to sit in parliament, unless he was summoned thereto by the King's writ ; though Mr. Cruise contends, on the authority of a proceeding in the parliament which met in 1225, as given by Matthew Paris, that the Crown could not omit to summon the principal barons to every parliament

There is cause to believe that whatever may have been the privileges of persons who held lands *per baroniam* antecedent to the 23rd Edw. I. 1295, from which time writs of summons are regularly recorded, at no subsequent period did such tenure constitute a right in the tenant to be summoned to parliament as a peer of the realm. The subject is very ably discussed by the Lords' Committees appointed to inquire into, and report on, the Dignity of a Peer of the Realm, in various parts of their Reports, and it is scarcely possible to rise from a perusal of them without adopting their Lordships' opinion on the question ; but the point admits of considerable illustration by inquiring,

*First*, whether the individuals who were summoned to parliament in the 23rd and subsequent years of the reign of Edward the First, and in the early part of that of Edward the Second, held lands of the Crown *per baroniam*.

*Secondly*, whether the Rolls of Parliament afford information on the subject.

*Thirdly*, whether any claims have been made to the dignity of a peer of the realm on the ground of being entitled to it by tenure ; and whether there have been any, and what decisions on such claims.

There are three writs extant of the 23rd Edward the First<sup>1</sup>,

<sup>1</sup> With respect to the writ of the 49th Hen. III. the Lords' Committees have observed, that of the eighteen persons then summoned to parliament, "it seems highly probable that no great regard was paid to tenure in the selection of persons to whom writs of summons were then issued."\* Upon this writ much stress cannot be laid, for it is clear that it did not comprise one-third part of the baronial body ; and as it is equally certain that, though issued in the King's name, he was at that time a pri-

\* Third Report, p. 80.

but as in the two last, those only who were summoned in the first writ were included, it is not necessary to notice them. The earliest writ of that year is tested 24th June, 1295, by which eleven earls and fifty-three barons were summoned. Of the latter number forty-two were certainly barons by tenure; one, Alan de Plugenet, was seised of the lands which had previously been held *per baroniam*<sup>1</sup>; and another, Thomas de Furnival, is ranked by Dugdale among the barons by tenure, though he cites a record to prove that he did not hold his lands by barony; but the remaining *nine*<sup>2</sup> are not any where stated to have been previously barons of the realm. Thus, although the greater part of those summoned by that writ were tenants of lands by barony, yet from being extensive landed proprietors, and consequently persons of considerable importance, they would naturally have been selected by the King to attend his parliaments. It may therefore be argued that writs were issued to them from the mere grace of the Crown, and not because the tenure of their lands entitled them to demand them, because we have positive proof that *all* the persons in the kingdom who held *per baroniam* were not summoned, each of whom would have had the same right to demand a writ as those who received it, if being tenants of lands by barony constituted that right; whilst, on the other hand, nearly a fifth of those who were then summoned did not hold lands by barony, and who consequently were never before considered as barons of the realm. If every person seised of lands *per baroniam* was, as has been contended, *entitled to demand* a writ of summons to parliament, the partial number selected by the King on that occasion, and still more, the circumstance of nine or ten

soner, it may be inferred that the Earl of Leicester, the leader of the rebellious army, only summoned those barons who were opposed to the royal cause. The earliest writ which is selected for the purpose of investigating how many of those included in it were barons by tenure, and also whether all who were deemed by Dugdale to have been barons by tenure were then summoned, is, therefore, that of the 23rd Edw. I., the next on record to that of the 49th Hen. III.

<sup>1</sup> This case will be more fully noticed in a subsequent page, because it affords *prima facie* evidence that the tenure of his lands entitled him to a writ of summons to parliament.

<sup>2</sup> Nicholas de Meynill, Walter de Fauconberg, Robert de Hilton, Walter de Huntercumbe, Robert Lascelles, Nicholas de Segrave, Hugh Pointz, Geoffrey de Camville, and Bogo de Knovill.

individuals being so selected who did not hold lands by that tenure, cannot be reconciled with any principle of justice on the part of the Crown; and allows a very strong inference, and which inference is supported by other facts, that no such privilege was at that time attached to the tenure of lands by barony; or in other words, that in the 23rd Edward I. when the first regular writ of summons (with the exception of that of the 49th Hen. III.) was issued, barons by tenure were not deemed to be entitled *de jure* to a writ of summons to parliament.

In the 24th Edward I. one writ of summons to parliament was issued, and in which only thirty-seven barons were included, nearly all, if not all, of whom were likewise summoned in the 23rd Edward I. The writ of the 25th Edward I. cannot be deemed<sup>1</sup> a writ of summons to parliament; and the next writ on record is that of the 6th February, 27th Edward I. 1299. This writ included ten earls and *eighty* barons; the considerable difference between which number of barons and those summoned in the 23rd Edward I. is worthy of attention. Of the *fifty-three* barons included in the writ of 23rd Edw. I. only *thirty-five* were summoned by that of the 27th Edw. I.; hence *forty-five* persons were then summoned for the first time, and eighteen who were summoned in the 23rd Edward I. were omitted. If the *forty-five* persons in question had all been barons by tenure, it might be said that, though omitted in the 23rd Edward I., they had, between that year and the 27th Edward I., established their claim to attend the legislative assemblies, and that their pretensions to do so was recognized by this writ; but on examination it appears that only *twenty-four*<sup>2</sup> of that number held lands per baroniam, whilst *twenty-one*<sup>3</sup> were never before

<sup>1</sup> See page 282, note.

<sup>2</sup> Zouche, Deincourt, Montalt, (this baron is deemed a baron by tenure, as his brother, to whom he was heir, and to whose lands he succeeded, was a baron by tenure, and was summoned to parliament in the 23rd Edward I., but died two years afterwards, s. r.,) Pinkney, Basset of Weldon, Plessetis, Tony, Scales, Engaine, Fitz-Payne, Moels, Hugh de Mortimer, Courtenay, Mohun, Chaworth, Multon, Bardolf, Genevil, Clinton, Beauchamp, Stafford, Tregoz, L'Orti, and Percy.

<sup>3</sup> Ferrers (his father was Earl of Derby, but his lands were forfeited,) Welles, Hacche, La Warr, Havering. Grandison, John Fitz-Roger, Peyvre, Tyes, St. Philibert, Leyburn, Vavasour, Ap Adam, Muncy, Pipard, Devereux, Latimer, Lansladron, Walter de Teyes, and Riparia.

barons of the realm. The twenty-four persons who held by barony, added to the forty-two or forty-three who were summoned by the writs of the 23rd Edward I., would only make *sixty-six* or *seventy-six* individuals who held by that tenure, if every person who held per baroniam was included in some writ between the 23rd and 27th Edw. I., a number certainly very much below not only the number of persons who held parts of a barony, even allowing each of those parts to include the caput baroniæ, but below the number of persons who were then seised of an entire barony.

By the writ of the 27th Edw. I. twenty-one persons were added to the baronage of the kingdom, and with the ten added by the writ of the 23rd Edw. I. and one or two summoned by separate writs between that year and the 27th Edward I., the peerage, independent of earls, consisted in the year last mentioned of about one hundred persons, *sixty-six* of whom had been barons by tenure, and *thirty-three* or *thirty-four* had become so only by virtue of writs of summons to parliament. The greatest number of barons ever summoned to parliament between the 23rd Edw. I. and the 5th Edw. II., both years inclusive, was on the 29th December, 28th Edw. I. 1299, when *ninety-nine* barons were summoned: this number, agreeable to the above calculation, was about what is considered to have been the extent of the baronage of the kingdom<sup>1</sup>. The next greatest number ever summoned in the above period was in the 32nd Edward I., when *ninety-four* barons are named in the writ tested 12th November, 1304; but they consisted of those only who had been previously summoned, with the exception of two<sup>2</sup>, neither of whom was a baron by tenure.

It would be difficult to state exactly what families were barons by tenure in the 23rd Edward I. Dugdale's account is generally deemed to be the most correct; but he expresses much doubt on the subject; for in the introduction to his Baronage he observes, "Perhaps it may be doubted by some, whether every family of whom I have discoursed in this first tome were strictly

<sup>1</sup> On that occasion, however, one individual who was not a baron by tenure, Almaric de St. Amand, was summoned for the first time.

<sup>2</sup> Robert de Burghersh and William Paynell.

barons by tenure or not, because nothing doth appear by inquisition of some, that they held by barony, nor by any memorial of the 'Reliefs.' To satisfy, therefore, the curiosity of such, I say, that having found from the notes of some former judicious antiquaries they were so reputed, I deemed it a safer error to take notice of them in that qualification, than by their omission tacitly to conclude them otherwise." It is certain that the number of barons by tenure in the reign of Edward the First greatly exceeded the number of persons summoned to parliament. Mr. Cruise remarks, "Matthew Paris or his continuator relates, that King Henry the Third being at St. Alban's, and having occasion to speak of his brother Richard Earl of Cornwall, reckoned first the names of the Kings of England that were canonized for saints, and afterwards the names of the barons of England that he could remember, which he found to be *two hundred and fifty*. Camden's copy has only *one hundred and fifty*; and Selden observes, that this latter number was possibly the true reading, it appearing from the Close Rolls, 47th Hen. III. that the temporal barons by tenure, being about *one hundred and fifty*, were called in that year, by several writs, to be present, 'cum equis et armis ad habendum servitium.' This calculation must, however, be understood to apply to the period when it was made, and to the *barones majores* only, for in the time of the Conqueror and that of his sons, when every tenant in capite who had a manor was a baron, the number must have been much greater<sup>1</sup>."

Admitting that the number of persons who held lands per baroniam in the 23rd and 27th Edward I. did not exceed the number stated to have done so in the 47th Henry III. namely, *one hundred and fifty*, and deducting from that amount *sixty-six*, the number of persons who held by barony, and were summoned to parliament, it appears that eighty-four, *considerably above half* of the individuals who before the 23rd Edward I. were indisputably barons of the realm, were never included in any writ of summons to parliament; a fact which most materially militates against the principle, that the tenure of lands per baroniam, at any time after the 23rd Edward I. constituted a legal right to a writ of summons to the legislative assemblies.

<sup>1</sup> *Cruise on Dignities*, p. 37.

The result of the inquiry of who were included in the writs of summons to parliament when writs of that nature first became general, or, to speak more correctly, at the time from which they are regularly recorded, admits of the following deductions:—

That *all who were* barons by tenure in the latter part of the reign of Edward the First, were not summoned; and that many, who never held lands “*per baroniam*,” nor previously had the reputation of barons of the realm, were summoned to parliament; facts which seem to prove that, in the issuing of such writs, the Crown not only exercised its discretion by summoning persons who never held “*per baroniam*,” but that of those who were seised of lands by that tenure, a part only were summoned to parliament.

With reference to the reigns of Edward the Second and Edward the Third, the Lords’ Committee have observed in their First Report, “The Committee have endeavoured to discover whether during that time, or afterwards, any such claim [to a writ of summons] had been made; and if made, what was the result. They have found many instances of persons who appear to have holden lands ‘*per baroniam*,’ and who have probably possessed the ‘*caput baroniæ*,’ and yet were never summoned by writ to parliament. They have found, in other cases, persons who were summoned to parliament having such ‘*caput baroniæ*,’ and whose descendants have continued to be summoned to parliament after alienation by themselves or their ancestors of that ‘*caput baroniæ*,’ whilst the alienee has not founded any claim to such a writ on the possession which he had acquired<sup>1</sup>;” and it appears, that until the claim to the Barony of Abergavenny in the 31st and 40th Eliz. and 2 Jac. I., there is no instance on record of an individual grounding a claim to the dignity of a peer of the realm on the tenure of lands, excepting the cases of Arundel, in the 11th Hen. VI., and the recital in the patent to John Talbot in the same year.

Very few entries occur on the Rolls of Parliament illustrative of the question under consideration, and of those the most important are the following, some of which are cited in the Printed Case of Mr. Berkeley’s claim.

<sup>1</sup> Page 404.



In the 13th Edw. III. in the parliament at Westminster, "*Les Countes et Barouns esteantz en dit Parlement granterent pur eux et pur lour Piers de la terre q' tieignent par Baronie, la disme garbe, la disme tuzon, le disme aignel de totes lour demeignes terres*." In the next year the prelates, earls, and barons, for themselves and their tenants, and the knights of the counties for themselves and the commons, granted the King the ninth fleece, garb and lamb<sup>1</sup>; and in the parliament in the 15th Edw. III. that grant is thus alluded to in a petition from the Archbishop of Canterbury and the bishops of his province:—"Item come nadgairs p' Prelatz, Countes, Barons, et autres Grantz de la terre qi sont tenuz venir a Parlement, fust un Eide graunte," &c. which grant was said to have been levied "*des autres gentz de Seinte Eglise qi ne sont pas tenuz de venir au Parlement*;" and the prelates and clergy petitioned the King for redress. In his reply his Majesty observed, that the ninth and tenth granted to him should be levied in the manner ordered, "*C'est assavoir, qe ceux qe tieignent du Roi par Baronie et deyvent venir au Parlement par Somonse, paient la Neofisme. Et les gentz de Seinte Eglise qe ne tieignent rien par Baronie, ne ne sont pas acoustumes d'estre somons au Parlement, paient la Disme*."

In the 28th Edw. III. 1354, the Commons petitioned that "*Come les tenantz les Seignurs qi teignent par Baronie et sont Somons au Parlement*," claim to be excused from paying the expenses of knights who come to parliament at the commandment of the King, that it would please his Majesty and his council to order them to be charged with others of the county accordingly. They were answered that the King desired the former practice should be observed<sup>2</sup>.

A similar request was twice made in the 2nd Ric. II. and each time in the following words:

"*Qe par la ou lour Despenses sont ordenez par Brief notre Seignur le Roi, assignez as Visconts des chescuns Countees, a lever selonc le purport du dit Brief a eux direct, a l'œps des Chivalers du Par-*

<sup>1</sup> *Rot. Parl.* vol. ii. p. 107 b.

<sup>2</sup> *Ibid.* p. 112.

<sup>3</sup> *Ibid.* pp. 129 b., 130.

<sup>4</sup> *Ibid.* vol. ii. p. 258 b.

lement notre Seigneur le Roi illoeques esteantz, la sont lour ditz Despenses assis sur chescune Ville des ditz Countees selonc l'af-ferant, par la ou le uns Villes sont tenuz du Roi, et riens ne veul-ent paier coment qe lour tenure ne soit d'ancien demesne notre Seigneur le Roi ; et les unes Villes deinz Franchise et des *Pieres du Roialme qi teignent par Baronie qi riens ne veullent paier a cause qe lour Seignurs sont au Parlement pur euz et leurs hommes* en propre per-sonne, et preignent si largement cest parol lour Hommes q' coment q'il ne ad en une Ville q' quatre ou cynk bondes, et cent ou deux centz qi teignent franchement ou par rolle de Courte et sont frankes du corps, unqore ne veullent riens paier as dites Despenses ; issint qe toute la somme par celle cause abregge et nient leve, si est re-coupe en paiement des Despenses des ditz Chivalers ; a grant damage et coustages de euz, Dont ils prient remede'."

The King replied as before, "Soit use come eut ad este devant cest heures."

With respect to the entry in the 15th Edw. III. it is evident from the context that the clergy only were alluded to<sup>1</sup>, all of whom, who held by barony, were liable to be summoned to parlia-ment<sup>2</sup>.

The entries in the 28th Edw. III. and 2nd Ric. II. would admit of the inference, that all persons who held by barony sat in parlia-ment ; and, also, that all persons who were summoned to parliament as peers held by barony, if it could not be indisputably proved that numerous persons in those years, who held lands by barony, which lands had rendered their possessors parliamentary barons

<sup>1</sup> *Rot. Parl.* vol. iii. pp. 44 b. 63 b.

<sup>2</sup> The reply in which the passage occurs was solely addressed to the clergy, and in the statement of the amount levied it is said to have been raised "*de Civibus, Bur-gensibus, hominibus Dominicor' Regis, et Communitatibus Regni ; et de Archi-episcopis, Episcopis, Religiosis par Baroniam tenentibus ; Comitibus, et Baronibus.*" *Rot. Parl.* vol. ii. p. 131 b. On the explanation of this grant in the same parlia-ment, it is said, "*Qe le Or la Roine ne courge en demand par reson de cel Graunt, et qe Citees et Burghs et touz les Religions qi tieignent par Baronie et sont tenuz de venir au Parlement, et ceux q' ont chatelz sanz gaiguerie, soient chargez en ceste contribution od la Commune.*"—*Ibid.* p. 133 b.

<sup>3</sup> See note, p. 66, *ante*.

before the 23rd Edw. I., were never summoned to parliament; and that many individuals were then, as well as before and subsequently, summoned who did not hold lands by that tenure<sup>1</sup>. Under these circumstances the conclusion which may be drawn from these entries is, that all persons who held by barony at the period in question, were liable to be summoned in case the King thought proper to send them writs; but that the Crown was neither obliged to summon them, nor to select from that body alone those individuals whom it might please to create barons, by commanding their services in parliament. The exemption claimed by those who held by barony, and by their tenants, was probably derived from an ancient privilege, which perhaps existed when there were no other peers than barons by tenure; and as the greater part of the peerage in the reigns of Edward the Third and Richard the Second held their lands "per baroniam," it may not have been thought politic on the part of the Crown to put an end to the exemption either by its own authority or by statute, if indeed a statute, which would have imposed an additional tax on them, would have received the consent of the peerage.

The only claims which are recorded to have been made to the dignity of a peer of the realm, on the ground of the dignity being attached to the tenure of certain lands, are, the Arundel and l'Isle cases, *temp.* Hen. VI., the Abergavenny case, *temp.* Eliz. and Jac. I., the Fitz-Walter case, *temp.* Car. II., and that of the Barony of Roos in 1616 and 1804.

**EARLDOM OF** The proceedings on the claim to the earldom of  
**ARUNDEL.** Arundel are elaborately stated in the "First Report of the Lords' Committees on the Dignity of a Peer of the Realm," from which most of the following particulars have been taken.

<sup>1</sup> See p. 130, note, where it is shown that a person who claimed in the 2nd Edw. III. to be exempt from juries, because he held of the king in chief by barony, and to be one of the "Grantz" of the lands, was never summoned to parliament. See also the case of Everdon, cited in the same note from the Year Books; and more particularly the First Report of the Lords' Committees on the Dignity of a Peer of the Realm, pages 395 et seq., and the "Third Report," *passim*.

At the time of the compilation of *Doomsdaybook*<sup>1</sup>, the Castle and Lordship of Arundel were possessed by "Rogerus Comes," who was an extensive proprietor of lands in various parts of England, and is said to have been the son of Hugh de Montgomery, in Normandy, and through his mother allied to the Conqueror. He assumed the name of Belesme, and has been called by antiquaries, "Earl of Shrewsbury," "Earl of Chichester," and "Earl of Arundel," but in the only record extant in which he is mentioned, excepting in *Doomsdaybook*, the Charter of the foundation of Battle Abbey, he is described as "Roger Com' de Muntgum"<sup>2</sup>, and which has been considered equivalent to "Roger de Montgomery Comes." The earl was succeeded by his second son Hugh, on whose death, without issue, his eldest brother Robert inherited his territories, but he being outlawed in the reign of Henry I., they were seized by the Crown.

The Castle of Arundel with other lands in Sussex, were bestowed by that monarch on Adeliza, his second queen, but apparently only for life, as her dowry; she married to her second husband, William de Albini, who, according to Dugdale, on the authority of a record not now extant, styled himself "Earl of Chichester," in the 15th Steph. 1150, and three years afterwards "Earl of Arundel".<sup>3</sup> It

<sup>1</sup> Excepting where other authorities are cited, the facts in this statement, relative to the earldom of Arundel, are taken from the *First Report of the Lords' Committees on the Dignity of a Peer of the Realm*, p. 407 to 434.

<sup>2</sup> *Fœdera*, N. E. tome i. p. 4.

<sup>3</sup> If the record in which William de Albini styles himself Earl of Arundel had been found, it would not, the Lords' Committee observe, "prove that he was Earl of Arundel, the Earls of Pembroke having been styled, in many instruments, Earls of Striguil, and the Earls of Derby Earls de Ferrariis, and the Warrens, Earls of Surrey, Earls Warren; and still less would it prove that he was Earl of Arundel, by mere possession of the Castle and Honour of Arundel." Their Lordships then refer to a charter without date, printed in the new edition of the *Fœdera*, tome i. p. 16, of the restoration of the temporalities of the bishoprick of Bath to Bishop Robert, "who was probably consecrated early in the reign of King Stephen," to which "William de Albini, with the additional description only of 'Pincerna,' was a witness." As only one person of the baptismal name of Robert was Bishop of Bath before 1274, and as William, Archbishop of Canterbury, who died 21st November, 1136, was a witness to it, it appears that this charter was dated in, or soon after 1135, when a Bishop Robert was, according to Le Neve's *Fasti Eccl. Anglicane*, elected to that Sec; hence it is probable that William de Albini was not then married to Queen Adeliza.

is said that the Empress Maud created him Earl of Arundel; and which creation King Stephen may have confirmed, but no record of such grant has been discovered. After the accession of Henry II. he granted to "*Willielmo Comiti Arundell'*, castellum de Arundell, cum toto honore Arundelli, et cum omnibus pertin' suis, tenend' sibi et heredibus suis, de me et de heredibus meis, in feodo et hereditate, et tertium denarium de placitis de Suthsex, unde comes est. Quare volo, et firmiter precipio, quod ipse et heredes sui, hec predicta, habeant et teneant, bene et in pace, et honorifice, et libere, et quiete, et hereditarie, in dominiis, et in militibus, in feodis, et in forestis, &c. &c. cum omnibus libertatibus et liberis consuetudinibus predicto honori et castellarie pertinentibus, sicut Rex Avus meus honorem illum habuit, quando cum in suo dominio habuit."

"From the words of this charter," their Lordships observe, "it is rather to be inferred that the true title of honour of William de Albini was that of 'Earl of Sussex,' and in the judgment of Henry II., on the differences between the Kings of Castile and Navarre in 1177, referred to Henry, to which this William, or his son and successor, was a witness, he is described as 'Will' de Arundel comite Sussex.'"

"The earl is said to have died in the 22d Hen. VI. 1175-6, and was succeeded by his son and heir, William de Albini; but in the 26th and 31st Hen. II., the Honour of Arundel appears to have been in the King's hands, so that either the then earl was a minor, or for some cause the King had seized the Honour<sup>2</sup>," but in the 1st Rich. I. he obtained a grant from the King of the castle and Honour of Arundel, and of the third penny of the pleas of the county of Sussex, in the precise words of the grant to his father. He died in 1196, and in the next year, 9th Rich. I., 1197-8, his son and heir, William de Albini, by the title of "Will' Comes Arundell," was one of the persons who swore to observe the treaty then made between Rich. I. and the Count of Flanders<sup>3</sup>. Twice in the 1st John, 1199, by the same designation, he was a witness to charters or conventions<sup>4</sup>; and also in the 4th and 5th John<sup>5</sup>; but in the contract between King John and the Count of Bologne, on the 4th May, 14th John, to which he was a witness, he is described as "W. de Arundell

<sup>1</sup> *First Report*, p. 409.

<sup>2</sup> *Ibid.* p. 410.

<sup>3</sup> *Feders*, vol. i. p. 94.

<sup>4</sup> *Ibid.* pp. 112, 115.

<sup>5</sup> *Ibid.* pp. 131, 134, 135.

Comite Sussexiæ<sup>1</sup>." In a record of the same year, tested on the 20th July, he is however mentioned as "Earl of Arundell<sup>2</sup>;" and again on the 29th March, 14th John<sup>3</sup>; in the 15th John<sup>4</sup>; and in the 1st and 8th Hen. III.<sup>5</sup>

The earl died in the 18th Hen. III. 1233, without issue<sup>6</sup>; and was succeeded by his brother and heir, Hugh de Albini, who was then a minor. In records of the 23rd, 25th, and 26th Hen. III. he is described as "Earl of Arundel" only<sup>7</sup>, and died without issue in the 27th Hen. III. 1243, leaving his four sisters, or their issue, his co-heirs; namely, Robert de Tattershal, son of Mabel, by Robert de Tattershal; John Fitz Alan, son of Isabel, by John Fitz Alan Lord of Clun; Nichola, the wife of Roger de Somery, and Cecilia, who married Roger de Monthaut or Montalt. To these persons the immense possessions of the earl descended, and were seized by the Crown for the purpose of livery to, and division among, those co-heirs, John Fitz Alan being then a minor, and in ward to the King. In the 28th Hen. III. division was accordingly made, and the portion to be allotted to Fitz Alan was ordered to be taken into the King's hands. To Fitz Alan, the second co-heir, the castle and manor of Arundel were assigned, whilst the eldest, Robert de Tattershal, "uni et primogenito heredi" of the earl, received the castle and manor of Bukenham in Norfolk, the ancient seat of the Albini family, which was held by the service of being butlers to the Kings of England, and from which they had usually the distinctive appellation of "Albini Pincerna<sup>8</sup>."

This division admits of a strong inference that the castle of Arundel was not then deemed to constitute its owner an earl, because if that important privilege was attached to it, it is not likely that it would have been assigned to the *second* instead of the *eldest* co-heir; and this inference is supported by other circumstances. It is not exactly known when John Fitz Alan became of age, but it may be safely assigned to about the 30th Hen. III., and when, if the tenure

<sup>1</sup> *Fædera*, N. E. vol. i. p. 105.

<sup>2</sup> *Fædera*, vol. i. p. 162.

<sup>3</sup> *Ibid.* vol. i. p. 169.

<sup>4</sup> *Ibid.* vol. i. pp. 173, 177, 187.

<sup>5</sup> *Ibid.* vol. i. p. 221.

<sup>6</sup> The Lords' Committees have erroneously considered that there were but three William de Albinis, Earl of Arundel.

<sup>7</sup> *Fædera*, vol. i. pp. 388, 399, 405.

<sup>8</sup> *First Report*, p. 411.



of Arundel castle rendered its possessor an earl, he became entitled to that dignity. He lived until the 51st Hen. III. *above twenty years* after he obtained livery of the castle, but he is not described in any one instance in contemporary records as "Earl of Arundel," but simply as "John Fitz Alan," or "John Fitz Alan de Arundell," or "Dominus Johannes filius Alani Domini Arundell," facts which are most satisfactorily established by the Lords' Committees'. He died in the 51st Hen. III. 1266-7, leaving John his son and heir twenty-two years of age, who died in the 56th Hen. III., leaving Richard, his son, of the age of five years, his heir. Various documents are printed in the First Peerage Report which place it beyond controversy, that the title of "Earl of Arundel" was never attributed to John Fitz Alan, one of the co-heirs of Hugh de Albini, the last earl, to John, his son, or to Richard, his grandson, between the 28th Hen. III., and the 20th Edward I., a period of *forty-eight years*; nor was the title of Countess attributed to Maud, the widow of the

<sup>1</sup> *First Report*, pp. 413, 414, 415, where several records are printed. The Committee remark, that "In the History ascribed to Matthew Paris, John Fitz Alan, *Earl of Arundel*, is mentioned as one of the persons taken at the battle of Lewes," but add, that "this history may have been made by some transcriber, a practice said to be not uncommon," p. 415. It may be material to state, in corroboration of their Lordships' conjecture, that William de Valence is styled in every record of the reign of Henry III., either without any addition, or as "Lord of Pembroke;" and the date of the earliest instrument, in which the title of "Earl of Pembroke" is attributed to him, is in the 3rd Edw. I., but when speaking of the battle of Lewes, in 1264, Matthew Paris, p. 995, alludes to him as "Earl of Pembroke," a dignity of which it is unquestionable he was not then possessed. The Committees observe also:—

"In a mandate, entered on the Patent Roll of the 35th of Edward the First, m. 14. directed to the Barons of the Exchequer, to ascertain what debts this Edmund Earl of Arundel stood charged with, either in his own name or in that of any of his ancestors, is this passage: 'Quod idem Edmundus tenetur ad scaccarium p'd'c'm in Cij l'i. xvj s' ix d'. de duobus debitis inveniuntur in rotulis scaccarii p'd'i sub nomine Johannis filii Alani, quondam comitis Arundell, antecessoris p'd'c'i Edmundi,' &c.

"It does not appear whether these were debts of John the grandfather or John the great grandfather of Earl Edmund; but this is the only record which the committee have found, attributing the title of earl to either; and perhaps it may be doubted whether the words 'quondam Comitis Arundell' were in Rotulis Scaccarii, or were added by the clerk who had searched the Roll. The words on the Roll may have been 'Dom. Arundell,' " p. 422.

John Fitz Alan who died in the 51st Hen. III., or to Isabella, the widow of John Fitz Alan, his son, who died in the 56th Hen. III.<sup>1</sup>; facts which fully justify the remark, that it is incredible the title should ever have been borne by either of those persons, as annexed to and united with the castle and honour of Arundel from time immemorial, and that it should have been omitted in instruments finding that they were seised of the castle and honour<sup>2</sup>.

Richard Fitz Alan became of age about the 16th Edw. I. 1288, but in various records up to that year he is styled "Richard Fitz Alan" only<sup>3</sup>. In the 20th Edw. I. he is however described as Richard Fitz Alan Earl of Arundel, and the Lords' Committees observe, "it seems probable that he became Earl of Arundel between the 17th and 20th Edw. I.; but in what manner the Committee have been unable to discover." "In the Placita in Quo Warranto in Salop, 20th Edw. I. 'Richard Fitz Alan, Earl of Arundel,' was summoned by two different writs; and though in the Abb. Pla. 231 Pasch. 21 Edw. III. rot. 38, Richard Fitz Alan is in two distinct entries styled only 'Ricardus filius Alani,' yet in another proceeding in the same term he is styled Ricardus fil' Alani Com' Arundell<sup>4</sup>," He was summoned to parliament as Earl of Arundel in the 23rd Edw. I., and continued to be so summoned until his death in the 30th Edw. I.<sup>5</sup>; when Edmund his son was found to be his heir, and of the age of sixteen and upward<sup>6</sup>. He was summoned to parliament as Earl of Arundel in the 34th Edw. I.<sup>5</sup>; and being irregularly adjudged guilty of high treason, was condemned and executed in the 20th Edw. II., which proceeding was confirmed in parliament in the 1st Edw. III.; and the Castle of Arundel was given to Edmund Earl of Kent, and who, if tenure constituted the earldom, became Earl of Arundel. The Earl of Kent died seised of the castle in the 4th Edw. III., leaving Edmund his son and heir, but it does not appear that either of those persons ever assumed that title.

Richard Fitz Alan, the son and heir of Earl Edmund, petitioned the King in parliament in the 4th Edw. III. and obtained a grant

<sup>1</sup> *First Report*, pages 416 to 420.

<sup>2</sup> *Ibid.* p. 417.

<sup>3</sup> *Ibid.* p. 420.

<sup>4</sup> *First Report*, p. 420.

<sup>5</sup> *Parliamentary Writs*.

<sup>6</sup> *Escheat*, 30th Edw. I. No. 30.



of the lands of which his father died seised ; but as the Earl of Kent had died possessed of the castle, and as the King had granted to the son of the said earl his inheritance, saving to himself the wardship and to the Countess of Kent her dower, the petitioner, on obtaining restitution of the castle, was obliged to render to the King and his heirs something certain, to be fixed on according to the King's pleasure, and part of his lands were assigned to the Countess in lieu of her claim of dower on the castle and lands belonging thereto, and to recompense the Earl of Kent for his loss of the castle. The King also granted, with the assent of parliament, to the said Richard Fitz Alan, that he should not lose the name of earl, honour, action, right, nor recovery, nor any other profit or advantage to demand through the said Earl of Arundel his father, and all others through him as of the blood of the said earl, but that he should be as able in all conditions as if no judgment had ever been made against his father, nor execution done thereon<sup>1</sup>.

Upon this restoration the Lords' Committees remark—

“ From this proceeding in parliament it may be inferred, that the grant to the Earl of Kent of the Castle of Arundel with the lands appurtenant, (including, it must be presumed, the honour of Arundel) did not make the Earl of Kent Earl of Arundel; and it is evident that the restoration of the castle and lands to Richard D'Arundel was not considered as making him Earl of Arundel. There was a special provision, by the authority of parliament, applying to the title of Earl of Arundel as a name of dignity, and personal, which would otherwise have been lost by the judgment of attainder against Edmund Earl of Arundel; and the restoration of the castle and honour of Arundel to Richard, was not considered as sufficient of itself to make him Earl of Arundel, which must have been the consequence if the title of Earl of Arundel had been immemorially annexed to and united with the castle and honour of Arundel. It is observable also, that the castle and lands were not then intended to be restored to Richard de Arundel, to be holden by the ancient services, but by rendering something certain, as the king should ordain; and until the patent of the 5th of Edward the Third, after mentioned, though Richard was re-

<sup>1</sup> *First Report*, p. 422. *Rot. Parl.* vol. ii. p. 56.

stored to the name of Earl of Arundel, yet he held the castle and honour of Arundel under this imperfect restoration in parliament, and the tenure remained to be ascertained by the king's patent of restitution'.<sup>1</sup> The earl was first summoned to parliament in the 5th Edw. III. : in the proceedings which took place to confirm him in the possession of the castle, no notice occurs of the title of the earldom.

The subsequent proceedings relative to the earldom of Arundel are ably detailed by the Lords' Committees as follow :—

“ By patent of the 19th of Edward the Third, reciting, that Richard Earl of Arundel had given to, and rendered into the King's hands (inter alia), the castle, honour, and manor of Arundel, to hold to the king and his heirs for ever, the king gave and granted to the said earl and his heirs, for his life, the same castle, honour, and manor, to hold as freely and entirely as the said Earl gave the same to the king, of the king and his heirs, by the services theretofore due and accustomed ; with remainder to Eleanor, daughter of Henry Earl of Lancaster, for her life ; with remainder to William de Clynton, Earl of Huntynodon, and others, and their heirs for ever ; with licence to the said Earl of Huntingdon, and the other grantees in fee, to remise and quit claim to the aforesaid Earl of Arundel, and his heirs, all the right which they had or could claim by virtue of the said letters patent in the said castle, honour, and manor, to hold of the king, and his heirs, by the services thereof due and accustomed, for ever. In this instrument no mention is made of the third penny of the county of Sussex.

“ Probably, in consequence of the licence contained in these letters patent, the Earl of Huntingdon, and the other grantees in fee, released the property to Richard Earl of Arundel, and his heirs ; for it appears, from the proceedings in parliament, in the 11th of Henry the Sixth, after noticed, that this Richard Earl of Arundel levied a fine in the 23rd of Edward the Third, between the earl, plaintiff, and John Alresford and John Sprot Chaplain, deforceants, of the castle, town, and manor of Arundel, with the appurtenances, to Alresford and Sprot, and that they rendered the same to the earl, to hold to him for his life ; with remainder to Alianor his wife, for her life ; with remainder to the heirs male of

<sup>1</sup> *First Report*, pp. 422, 423.

the body of the Earl by Eleanor ; with remainders over ; and the claim of John Fitzalan in the 11th of Henry the Sixth, was founded on the title thus created.

“ This fine could not extend to the third penny of the county of Sussex ; and it is a curious circumstance that the fine was of the castle, town, and manor of Arundel, the word honour, or the word barony, or earldom, not being in the fine. This might lead to curious questions of law, not unimportant to the subject of inquiry by the Committee ; and particularly as to the various senses in which the words ‘ comitatus or earldom, honour, barony, and manor,’ were anciently used, and the variations in the use of those terms at different times. The grant of Henry the Second and Richard the First, are of the honour of Arundel ; and some records, before cited, describe the possessions of the Fitzalan family in Arundel, as the fourth part of a barony, or the fourth part of an earldom, ‘ comitatus.’ The terms honour, barony, and manor, may be deemed synonymous, if the honour or barony consisted of only one manor ; but an honour or a barony often extended into various counties, and included many independent manors ; and the inquiries before stated show that all the possessions of Hugh de Albini, Earl of Arundel, were considered either as one barony or one earldom ; but the full investigation of this subject would lead the Committee into an inquiry of vast extent.

“ The earl, having survived Eleanor, died, leaving Richard his eldest son, who then became Earl of Arundel, and left Thomas his son and heir, who became Earl of Arundel, but died without issue, in the 3rd of Henry the Fifth, leaving four sisters ; Elizabeth, Duchess of Norfolk, then wife of Sir Gerard Useflete ; Joan, Lady Bergavenny ; Margaret, wife of Sir Rowland Lenthall ; and Alice, wife of John Charleton, Lord Powys, his heirs.

“ On the death of Earl Thomas, John Fitzalan succeeded to the castle and honour of Arundel by virtue of the entail so created, being son of John, son of John, younger son of Earl Richard (who created the entail) by Eleanor his wife ; and as such, if the fine was duly levied, he appears to have had clear title to the estate ; and he accordingly obtained livery, in the 4th of Henry the Fifth, of the castle, town, and manor of Arundel, with the town and manors of

Clun and Oswaldestre, and other large estates, included in the entail; but he does not appear to have assumed the title of Earl of Arundel<sup>1</sup>.

"In the 1st, 2nd, and 3rd of Richard the Second, John de Arundel was summoned to parliament, by writs directed, 'Johanni de Arundell'; and Dugdale supposes that these writs were addressed to John, younger son of Earl Richard, who created the entail, and grandfather of John, who succeeded to the castle and honour of Arundel, on the death of Earl Thomas. He married Eleanor, daughter of John Lord Maltravers, and sister and heir of Henry Lord Maltravers, and perished by shipwreck in the 3rd of Richard the Second, leaving, by Eleanor, John his son<sup>2</sup> and heir, who was never summoned to parliament. He died in the 9th of Henry the Fifth, leaving John his son and heir, a minor, who, attaining his age, was summoned to parliament in the 7th of Henry the Sixth, by writ, directed 'Jo. Arundell de Arundell, Chivaler.' If the dignity of Lord Fitzalan was annexed to the baronies of Clun and Oswaldestre, which were included in the entail made by Earl Richard, he had also a claim to that title. If not, it was in Abeyance between the co-heirs of Earl Thomas; and the title to the dignity of Lord Fitzalan, entailed by the act of parliament after mentioned, if it belonged to the then Earl of Arundel, must have been in right of one of those co-heirs.

"According to the entry in the parliament roll of the 11th of Henry the Sixth, upon reading the statement of the title of John Earl of Arundel, before mentioned, and consulting the judges, and others learned in the law, and the rest of the king's council, 'Auditis eciam hinc inde nonnullis profundis et materiis rationibus allegationibus et motivis;' and considering that Richard Fitzalan, cousin, and one of the heirs of Hugh de Albini, formerly Earl of Arundel, was seised of the castle, honour, and lordship in fee, and by reason of his possession thereof, without any other reason or creation, was Earl of Arundel, and held the name, style, and honour of Earl of Arundel, and the place and seat of Earl of

<sup>1</sup> The widow of this John Fitzalan, however, speaks in her will of her late husband John Earl of Arundel, and describes herself as "Alice Countess of Arundel," &c.

<sup>2</sup> Grandson, viz. son and heir of John Fitzalan, who died just before his father.

Arundel in parliament and councils of the King, as long as he lived, without any claim, reclamation, or impediment: the King, led by these, and other considerations and motives, towards the person of the claimant (who was styled the said 'now Earl of Arundel,' thereby recognizing him as at the time and before the judgment Earl of Arundel), to whom the said castle, honour, and lordship of Arundel, by special hereditary right, had descended, and who, according to his innate nobility, as well by his bravery in arms as his wisdom in council, had shown himself, and daily showed himself, incessantly obsequious to the King in his kingdom of France, and weighing the distinguished merits of the Earl, for which the council of the King, in his kingdom of France and Duchy of Normandy, by their commendatory letters for exaltation of the title and honour of the said earl, and the expedition of the business then on foot, had again and often specially recommended him; and willing therefore to make the said John (again styling him 'now earl') in this respect, for his great merits, as far as without derogation from the rights of others could be, the completion of speedy justice to be done, by advice and assent of prelates, dukes, earls, and barons in the then parliament being, the said John, then Earl of Arundel, to the place and seat of Earl of Arundel, in the king's parliaments and councils anciently used and accustomed, in the same manner and form in which his ancestors, Earls of Arundel, the same seat and place best and most freely had, admitted him to have and possess, and decreed, appointed, and declared him to be admitted; not intending, however, that any prejudice should be produced in this respect to any title, right, or interest of the King, or of the said Duke of Norfolk, or of any other person, by occasion of the premises, in any manner; but that the title, right, and interest, as well of the King, as of the said Duke of Norfolk, and every other person in the premises, should always remain safe and untouched, the present order, will, and decree in any thing notwithstanding.

" The saving clause at the conclusion of this order, will, and decree, was that species of saving which in law is deemed illusory, operating nothing. For having determined the right, and in the judgment assumed that John Fitzalan was before the decision of

his claim Earl of Arundel, stating him throughout the proceeding Earl of Arundel, and granting to him the ancient place and seat of Earl of Arundel in parliaments and councils, there was necessarily a judgment against the claim of the Duke of Norfolk, and of every other person, as to the ancient dignity of Earl of Arundel.

“ It is difficult to conceive what there was in the first petition of the Duke of Norfolk to require apology, except that it might be deemed to question the King’s right to designate John Fitzalan in his commission, or otherwise, Earl of Arundel ; and undoubtedly in many instances the predecessors of the King had exercised a right, when an earl or baron died without heirs male, of suffering the title wholly to drop, or of calling to parliament, by the same name of dignity, some other person not the heir of the person who last had the dignity<sup>1</sup> ; so that by the king’s commission to the earl, he might be deemed to have been truly earl ; and the claim of the Duke of Norfolk might be considered as questioning the extent of the King’s prerogative, though he claimed the castle, honour, and lordship, as well as the name of Earl of Arundel. Henry the Sixth appears also to have claimed a right by his prerogative to give precedence as he thought fit, which he did in many instances.

“ The concluding words of the decision are in themselves singular ; for the judgment is not that the earl, by reason of his seisin of the castle, honour, and lordship of Arundel, was of right Earl of Arundel, but that the King, by advice of the lords, admitted the said John, then Earl of Arundel, to the place and seat of Earl of Arundel, in parliament, and in the king’s councils, anciently used and accustomed, in the same manner and form in which his ancestors Earls of Arundel had place and seat ; not intending however to prejudice any title, right, or interest of the King, or of the Duke of Norfolk, or any other person, but that the title, right, and interest, as well of the King as of the Duke of Norfolk, and every other person, in the premises, should always remain saved and unhurt, the then ordinance and decree notwithstanding.

“ The judgment therefore was in effect, that the earl, being Earl of Arundel, his claim was well founded upon the statement made ;

<sup>1</sup> The few instances which have occurred of this nature, do not admit of so general a remark on the subject.

and that, being Earl of Arundel, he should have the place and seat which he claimed ; but that this judgment, which in effect fully decided his right to be earl, and to be earl with the precedence which the former Earls of Arundel had, should be no prejudice to the Duke of Norfolk, or any other person, to whose claim in future the judgment must have been a complete bar, even if the Duke of Norfolk alone, or together with the other co-heirs of Thomas Earl of Arundel, or any other person, had recovered by judgment of law the castle, honour, and lordship of Arundel. It may be doubted, therefore, whether this judgment itself did not operate as a severance of the dignity of earl from the castle, honour, and lordship, if ever they had been united.

“ It is also observable that no mention is made in the proceeding of any evidence produced by the earl to show the immemorial usage under which he claimed ; and it is clear, from the evidence which the Committee have discovered, that the castle, honour, and lordship of Arundel, at the time of the Domesday Survey, belonged to another family, and became forfeited to the Crown, and were in the hands of the Crown for a considerable time ; that the grants of the land to William de Albini by Henry the Second, as they appear on the *inspeximus* obtained by Richard Earl of Arundel in the 5th of Edward the Third, so far from importing that the name and dignity of earl were annexed to the castle, honour, and lordship of Arundel, rather import (according to the effect of other similar charters) that the true title of the earls of the Albini family, to whom those lands were so granted, was that of Sussex ; and that accordingly, in solemn instruments, they were styled Earls of Sussex, and not Earls of Arundel<sup>1</sup> ; and that under the charter of *inspeximus*, of the 5th of Edward the Third, Richard Earl of Arundel claimed the third penny of Sussex, as William de Albini had it under the two charters of Henry the Second and Richard the First, with the words ‘ *unde est comes* ; ’ and the charter of the 16th of October, in the 5th of Edward the Third, reciting the grants of the 1st of Henry the Second and the 1st of Richard the First, confirmed those grants of the castle and honour of Arundel, with the third penny, to the same Richard Earl of Arundel.

<sup>1</sup> See, however, pages 363, 364, *ante*.

“ The Act of Restitution, of the 4th of Edward the Third, restored only the title of Earl of Arundel absolutely, and restored the castle and honour, with a qualification to be expressed in a future grant of the Crown.

“ The Charter of Restitution, of the 5th of Edward the Third, was made to Richard Earl of Arundel as Earl; was confined to the castle, honour, and lordship of Arundel; and made no mention of the third penny.

“ The Letters patent, of the 11th of Edward the Third, confirming the grant of the 5th of Edward the Third, and the letters patent of the 19th of Edward the Third, were also silent on the subject of the third penny; and the fine was not levied of the third penny of the county of Sussex, if it could be the subject of a fine; and therefore any right which the Earl of Arundel, who levied that fine, had in the third penny of the county of Sussex, could not pass by the entail of the castle, honour, and lordship of Arundel.

“ It also appears that John Fitzalan, who was the cousin and one of the heirs of Hugh Earl of Arundel, never had, in contemporary records, the title of earl; and that John his son never had, in such records, that title, though both were seised of the castle and honour of Arundel; and that their respective wives had never the title of countess, though the widow of Earl Hugh had that title. And this is tacitly admitted by the form of the judgment, stating Richard Fitzalan as the immediate heir of Earl Hugh, and avoiding to notice the possession of John his father and John his grandfather, which would have been inconsistent with the assertion that all his ancestors had had the title of Earl of Arundel, by reason of the castle, honour, and lordship to which it was alleged the name of earl had been at all times united and annexed.

“ But it is particularly observable, that the claim of the earl to the title of Earl of Arundel, as annexed to the castle, manor, and lordship of Arundel from time immemorial, is not founded on the general law of the land, but on a special prescription, alleged in respect of the particular property and particular dignity. The Lordship of Clun, the ancient possession of the Fitzalan family, and which by a return inserted in Testa de Nevill (Salop and



Stafford, 272) ' Quod dominus Joh'es fil' Alani tenet Baron' de Clun de domino Rege in Capite,' appears to have been a barony, was included in the same entail ; but the earl did not in the proceeding claim the title of Baron of Clun, as annexed to the lordship of Clun ; and it does not appear that he ever assumed any title but those of Earl of Arundel and Lord Maltravers, except as he was summoned to parliament as John Arundel Chevalier ; and in the 22nd of Edward the Fourth, and 2nd of Henry the Seventh, Thomas, son of William then Earl of Arundel, was summoned to parliament in the lifetime of his father as Lord Maltravers.

" Upon the fine which created the entail, and the patent of the 19th of Edward the Third, it may be observed, that if the Countess of Arundel had survived her husband, she would have been the tenant for life of the castle, town, and manor of Arundel, both under the fine and under the letters patent of the 19th of Edward the Third, paramount the fine ; and that consequently the dignity of Earl of Arundel would not have descended to her son till her death. And if the Earl of Huntingdon, and the other grantees of the fee, had not conveyed (as it may be presumed they did) the remainder in fee limited to them by the patent of the 19th of Edward the Third, to the Earl of Arundel and his heirs, the right to the seisin of the castle, town, and manor of Arundel would, on the death of the earl and his countess, have been in them ; and the title of Earl of Arundel must have been in abeyance, until they had conveyed the land according to the license. For all these grantees in fee could not have been earls by reason of their seisin of the property whilst it remained in them ; and it seems extraordinary that those who advised the Crown should have approved of such a limitation of the property, if aware of this consequence of the limitations ; or that the earl himself should have settled the whole on his wife, to exclude his son from the dignity of earl during her life, if she had survived her husband. It must seem extraordinary also that the judges of the land should have advised (if they did advise) the saving clause in the judgment, which they must have known was in law wholly illusory : and accordingly, in a subsequent parliament, the judges appear to have deemed it illusory.

" John Earl of Arundel died in the 13th of Henry the Sixth, leaving an infant son, who dying soon after, William, brother of John, became Earl of Arundel; and in the 24th of Henry the Sixth claimed precedence of the Earl of Devonshire, which was referred to certain lords, who did not decide upon the claim; and therefore in the 27th of the same king it was referred to the judges. The judges considered the proceedings in the 11th of Henry the Sixth as an act done in parliament, and therefore declared that the subject of dispute was matter of parliament, belonging to the king and lords in parliament, to be by them decided and determined. The king and lords then decided in favour of the Earl of Arundel, against the Earl of Devonshire, with a saving as illusory as the saving in the former decision.

" William Earl of Arundel was succeeded by his son Thomas, who, in the lifetime of his father, was summoned to parliament in the 22nd of Edward the Fourth and 2nd of Henry the Seventh, by writs directed to Thomas Arundel de Maltravers. He was succeeded by his son William, who was succeeded by his son Henry, whose second daughter, Mary, married Thomas Howard Duke of Norfolk, descended from Robert Howard, who married Margaret daughter and at length co-heir of Thomas Moubray Duke of Norfolk, by Elizabeth daughter of Richard Fitzalan Earl of Arundel, and sister and co-heir of Thomas Earl of Arundel, and by her had issue John Howard, created Duke of Norfolk by Richard the Third. This Duke and Thomas Earl of Surrey his son were attainted by Act of Parliament in the 1st of Henry the Seventh. The son was restored partially by Act of the 4th of Henry the Seventh. The Act of Restoration is in the form of a petition, by Thomas Earl of Surrey; and the effect seems to be to render the Acts of Attainder of his father and himself, against his father and the petitioner, their heirs and assigns, and every of them, void and of no effect, and to restore the petitioner to all rights, &c. and hereditaments which late were of his father or himself, and forfeited by the attainder, with the exception of certain lands and hereditaments. But it was provided that the Act should not restore the petitioner to any thing granted to the petitioner or his father by Richard the Third, but only to the creation of the petitioner into

Earl of Surrey, and his name of earl by reason of that creation, and the annuity granted to him and the heirs male of his body for sustentation thereof. This Act, therefore, seems to have enabled the earl to take, by descent from his father, all the dignities vested in his father by descent, and consequently the dignities of Lord Fitzalan, if vested in his father, with Clun and Oswaldestre, if those were distinct titles. His great grandson, Thomas Duke of Norfolk, was attainted; but Philip, the eldest son of this Duke succeeded to the title of Earl of Arundel, on the death of the Earl of Arundel his grandfather by his mother; and being afterwards attainted, his son and heir Thomas was by Act of Parliament restored to all such titles of honour as his father Philip Earl of Arundel had lost by his attainder, and to such dignity of baronies as his grandfather Thomas Duke of Norfolk had lost by his attainder. The lands which formed the baronies of Clun and Oswaldestre had, however, been granted to the Earl of Northampton, and passed from him to the Earl of Suffolk, and therefore were lost to the family of the Earl of Arundel.

“ This Thomas Earl of Arundel, in the 3rd of Charles the First, obtained an Act of Parliament, intituled ‘ An Act concerning the title, name, and dignity of Earl of Arundel, and for the annexing of the castle, honour, manor, and lordship of Arundel in the county of Sussex, with the titles and dignities of the baronies of Fitzalan, Clun and Oswaldestre, and Maltravers, and with divers other lands, tenements, and hereditaments in the Act mentioned, being then parcel of the possessions of Thomas Earl of Arundel and Surrey, Earl Marshal of England, to the same title, name and dignity of Earl of Arundel.’

“ The Act is in the form of a petition of the earl to the king, stating that the title, name, and dignity of Earl of Arundel was, and from the time whereof the memory of man was not to the contrary had been, real and local; and had from the time aforesaid belonged unto and been used and enjoyed by himself and such of his ancestors as had had in them and enjoyed the inheritance of the castle, honour, and lordship of Arundel: and by reason of the inheritance and service of the said castle, honour, and lordship, the earl and his ancestors, for time whereof the memory of man was

not to the contrary, had been Earls of Arundel, and had thereby had, used, borne, and enjoyed the title, name, and dignity of Earl of Arundel, and thereby also had, from the time aforesaid, had and enjoyed their places in parliament, council, and elsewhere, as Earls of Arundel; and the earl prayed that it might be enacted, that the said title, name, and dignity of Earl of Arundel, and castle, honour, and lordship of Arundel, and the titles, names, and dignities of Lord Fitzalan, Lords of Clun and of Oswaldestre, and Maltravers, and all places, pre-eminences, arms, ensigns, and dignities to the said earldom, castle, honour, and baronies belonging, and the borough and manor of Arundel, and divers other lands and hereditaments specified in the Act, might and should for ever, by virtue of the said Act, stand and be, and remain conveyed, assured, limited, and settled to him the said Thomas Earl of Arundel and Surrey, and the heirs male of his body; and for default of such issue, to the heirs of his body: and for default of such issue, to his uncle Lord William Howard, and the heirs male of his body; and for default of such issue, to the heirs of the body of Lord William Howard; and for default of such issue, to the said Thomas Earl of Arundel and Surrey, and his heirs for ever; with provisions avoiding dowers and alienation by any of the persons to whom the premises should come by virtue of the Act.

“ This legislative provision has put an end to all question as to the title of Earl of Arundel, so long as there remain issue male of Thomas Earl of Arundel. Upon what ground the legislature proceeded in so limiting the title of Lord Fitzalan, the Committee have not discovered, inasmuch as that title, if derived from possession of the baronies of Clun and Oswaldestre, must have followed the possession of those baronies which were not in the possession of Thomas Earl of Arundel, having passed to another branch of the family, and therefore were not entailed by the Act; and if the title of Lord Fitzalan was a personal dignity, the title could not have belonged to John Earl of Arundel, who claimed the earldom under the entail made by Earl Richard in the reign of Edward the Third, as he was not heir-general of the family; and Thomas Howard Earl of Arundel, who obtained the Act, if one of the co-heirs of

Thomas Earl of Arundel and Lord Fitzalan who died in the 3rd of Henry the Fifth, by descent from one of his sisters, yet could have no right to the title of Lord Fitzalan as a personal dignity, except by the king's favour, the title being in abeyance. The Act indeed may be considered as a grant of the Crown, determining the abeyance; but the petition of the Earl of Arundel assumed that he had the title of Fitzalan.

" The Act indeed states no right to the title of Fitzalan. If by the additional words of lords of Clun and Oswaldestre, it was intended to assert that Clun and Oswaldestre were baronies, and that the possessors of those baronies were lords of parliament by tenure, Thomas Earl of Arundel was not possessor of those baronies; and if he had been, the name of dignity could not be Fitzalan, being only the name of a family who were at one time the possessors of Clun and Oswaldestre. The dignity of Lord Fitzalan could only have originated with a writ of summons to parliament, like the title of Le Despenser; and if the cause of the dignity had been the possession of Clun and Oswaldestre, the writ would have varied with the varying name of the possessor. There appears no writ on record summoning any of the ancestors of Richard Fitzalan, first Earl of Arundel of that name, to parliament by the name of Fitzalan, though they may have probably had such summons before the reign of Edward the First: and the territorial baronies of Clun and Oswaldestre not belonging to Thomas Earl of Arundel, and not being included in the entail created by the Act, the title of Fitzalan was in fact disjoined from those baronies, if it ever had had any connection with them. The entail of the dignity of Lord Maltravers is also extraordinary. It was probably a mere personal dignity, derived from John Maltravers, summoned to parliament in the reign of Edward the Third, and had come to the family of Fitzalan by marriage of an heiress with John, younger son of Richard Earl of Arundel, who made the entail of the Arundel estate before mentioned; and John, who claimed the title of Earl of Arundel in the reign of Henry the Sixth, was probably entitled to be Lord Maltravers in the right of his grandmother. The right of the Howard family to this title was derived from the marriage of Thomas Duke of Norfolk with Mary, one of the co-heirs, and

at length sole heir, of Henry Fitzalan Earl of Arundel : but as a personal dignity.

“ It is also a singular circumstance that it does not appear that the framers of this Act adverted to the consequence of failure of heirs male of the body of Earl Thomas, when under the entail created by the Act the landed property should become a partible inheritance amongst the heirs of his body, who, in process of time, might become many in number, amongst whom the castle, honour, and lordship of Arundel might be divided, and who were all to take before the Lord William Howard, and the heirs male of his body ; and the same difficulty would occur on failure of heirs male of Lord William, when the limitation to the heirs of his body would take place ; and again, if the heirs of the body of both should fail, and the limitation to Thomas Earl of Arundel and Surrey and his heirs for ever should take place, in which case the landed property might become divisible into many portions.

“ What might be the effect of an attainder of one of the heirs male of Thomas Earl of Arundel and Surrey, may also be a question. The present possessor of the titles is not heir of the body of Earl Thomas, though heir male of his body ; nor is he right heir of Earl Thomas.

“ On the whole, therefore, the legislature, in passing this Act, cannot have examined the subject with much attention, or adverted to its probable consequences. The Act, at the same time, if it has any authority as a declaration of law, is a declaration that the alienation of the territorial baronies of Clun and Oswaldestre did not carry with it the personal dignity of Lord Fitzalan ; but that that dignity remained a dignity in gross, notwithstanding the alienation. It is also so far a declaration that the dignity of Lord Maltravers, originating in the reign of Edward the Third, was a personal dignity, having no relation to land. It may indeed be contended that in fact the Act has made the earldom of Arundel a personal dignity, whatever it may have been before. The title of the Act is ‘ Concerning the title, name, and dignity of Earl of Arundel, and for the annexing of the castle, honour, manor, and lordship of Arundel, &c. to the title, name and dignity of Earl of Arundell ;’ and though the enacting clauses are not in the same

words, they are not inconsistent with the title, and this might be deemed the true construction of the Act. Perhaps the Crown might be deemed entitled by its prerogative, as the dignity of earl is not partible, to select one amongst many co-heirs to whom a writ of summons to parliament, as Earl of Arundel, might be directed ; but whether the title to the landed property might be affected by such a selection, is a question, to answer which authority seems to be wanting.

“ The Act, however, has obviated all difficulty during the continuance of heirs male of Thomas Earl of Arundel and Surrey, and so long has prevented what the decision in the 11th of Henry the Sixth had established—that the alienation of the castle, manor, and lordship of Arundel, by sale, or by any other means, according to the caprice of the person seised in fee of the castle, manor, and lordship of Arundel, would transfer the title of Earl of Arundel ; so that one person might have been a peer of the realm by that title on one day, and another person entitled to demand a writ by the same title the succeeding day, whilst the effect of the writ by which the first person was summoned would remain to be decided on principles which would militate, perhaps, with resolutions and decisions of the House in subsequent cases.”

That this case does not establish the principle contended for by the present claimant of the barony of Berkeley, is manifest from the fact, that the possessor of the castle of Arundel did not, during the long period of forty-eight years, and at a time when the whole baronage enjoyed their dignities by virtue of tenure, once assume the title, which has been supposed to be attached to the lands of which they were seised. However strong the admission of the King and Parliament in the 11th Hen. VI. may appear, that the possessors of Arundel Castle were, by reason of that tenure, Earls of Arundel from time immemorial, it is unquestionable that such was not the case ; and that the Crown could then be imposed upon by the allegations of petitioners for honours, is fully proved by the creation of John Talbot as Baron de l'Isle, in the 22nd year of the same reign, who claimed that barony upon precisely the same grounds as John Fitz Alan claimed the earldom, and with the same success, though his assertion was

equally untrue. Admitting however, for a moment, that the tenure of the Castle of Arundel had always constituted its possessor an earl, there is not a word in the whole proceedings on the subject in the reigns of Henry the Sixth or Charles the First, which justifies the opinion that the Castle of Berkeley rendered the owner a peer, or that the tenure of any other lands in England constituted their possessor a baron of the realm. That case is consequently of a singular and insulated description, depending on no general principle, and admitting of no general inference; and what is more important with reference to the claim to the barony, of Berkeley, it does not rest on mere inferences from circumstances not uniform in themselves, and which have occurred in other instances where the question of tenure did not arise; but from a solemn recognition by the King in parliament on the first, and an express statute on the second, occasion. If, therefore, the earldom of Arundel is a territorial dignity, it is so by legislative enactment; and though the cause of the first decision may have arisen from a belief in the prescriptive right which Fitz Alan ascribed to the possession of the castle, that fact does not in any degree prove that the rank of the peerage was also attached to the tenure of another castle, which was never once mentioned in the proceedings.

**BARONY OF L'ISLE.** In the 22nd Hen. VI. Sir John Talbot preferred a claim to the barony of l'Isle, stating, that all the tenants of the manor of Kingston l'Isle in Berkshire, had been barons of the realm from time beyond legal memory, in consequence of being lords thereof, and that he, as tenant of it, was entitled to the dignity of a baron with seat in parliament and councils. As this case has been fully discussed in the preceding pages, it is only necessary to observe, that no person ever did enjoy the dignity of a peer of the realm by the tenure of that manor; that the said John Talbot never was seised of it; and consequently that every word of the preamble of the patent of the 22nd Hen. VI. was false. If a grant, made in consequence of false averments, can justify any inference



illustrative of the question, whether the tenure of lands in the fifteenth century rendered the possessor barons with places in parliament, the only deduction to be made from the patent of the 22nd Hen. VI. is, that the Crown recognised the possibility of dignities being attached to territorial possessions; but it may be argued that that recognition referred to a period when it is notorious that tenants *in capite* formed the baronage of the realm; and that if it were true that the dignity of Baron l'Isle, with a seat in parliament and councils, was by law attached to the manor of Kingston l'Isle, and that John Talbot was then tenant of that manor, it was not necessary for the Crown to *create* him to that dignity by an express patent. His claim, if well founded, required no other recognition than that which former possessors of that manor, according to the statement in his petition, obtained, namely, writs of summons; hence, a formal creation by patent to a dignity which, if his averments were true, the Crown could neither create nor destroy, raises a strong presumption that the right to a dignity by tenure no longer existed; and that whether, as he asserted, the former possessors of Kingston l'Isle were barons of the realm or not, he had no other pretensions to the barony than such as he received by that patent. Under these circumstances the l'Isle case does not afford any support to the opinion, that dignities were attached to the tenure of lands in the reign of Henry the Sixth, even if it does not rather tend to show that nothing but a charter could then *continue* such a privilege, where it was acknowledged by the Crown to have been possessed for ages by persons under the same right as was said to be vested in the grantee.

From that period there is no instance of a similar claim until the Abergavenny case <sup>1</sup> in the 41st Eliz. and 2nd Jac. I., unless it be said that the facts which have been stated relative to the alienation of Berkeley Castle are in point; and if so, the inference is, that in the

<sup>1</sup> In the *Third Report of the Lords' Committees on the Dignity of a Peer of the Realm*, it is said, "A right to be summoned to parliament by reason of tenure of any land denominated at any time a barony, does not appear, by any document which the Committee have discovered, to have been asserted in the reign of Edward the First, or in the reign of any of his successors, till the claim made by Edward Neville to be summoned to parliament by writ in respect of his possession of the barony of Bergavenny, in the reign of James the First."—p. 92.

reign of Henry the Eighth the principle had ceased to be acted upon, even allowing that it prevailed from the 7th Hen. VII. to the 14th Hen. VIII., of which there is *no proof*.

**BARONY OF ABERGAVENNY.** Although until the 23rd of Edw. I. the castle of Abergavenny constituted its possessor a Peer of the Realm, it is extremely doubtful if the title of Abergavenny, as a title of peerage, existed until the reign of Richard the Second, or more probably until that of Henry the Sixth. The castle was acquired by the family of Cantilupe by marriage with the daughter and heiress of Lord Braose in the reign of Henry the Third, and in 1272 it devolved on John de Hastings, as nephew and heir of John de Cantilupe, who died seised of it in that year. Henry de Hastings, the father of the said John de Hastings, was a baron by tenure, and had been summoned to parliament in the 49th Hen. III., and dying in 1268, was succeeded by his said son, who was summoned to parliament as "John de Hastings" from the 23rd Edw. I. to the 6th Edw. II., when he died. His son, of the same name, was summoned as "John de Hastings," from the 7th to the 18th Edw. II., in which year he died. Laurence Hastings, his son and heir, was then only six years old, and was created Earl of Pembroke in 1339. His son and grandson were Earls of Pembroke and "Lords of Abergavenny," and the latter died without issue in 1389.

It is material to observe that John de Hastings who was seised of the castle of Abergavenny in the 23rd Edw. I. was not only a baron by tenure, by the possession of that castle, but also by tenure of the lands which he inherited from his father; and if the possession of lands which were held by barony gave a right to the possessor to a writ of summons to parliament, he was as much entitled to demand it by the tenure of the lands which rendered his father a Baron of the Realm, as by the tenure of Bergavenny Castle, which he inherited from his mother. That castle continued in the family of Hastings for five generations; and as the three last possessors of it were Earls of Pembroke, it is only from the writs addressed to the first two John de Hastings, who were summoned to parliament as barons, that any inference from the manner in which they

were designated in those writs can be drawn. That inference would tend to establish that the barony of which they were possessed was that of Hastings, for although above *thirty* writs were directed to them, no mention is made in either of the title of "Bergavenny;" and in the 33rd Edw. I. when Lord Hastings is noticed on the Rolls of Parliament, he is described as "Monsr. Johan de Hastings<sup>1</sup>," by which appellation he and his son were always alluded to in contemporary records.

On the death of the last Earl of Pembroke in 1389, the castle of Bergavenny devolved on William Beauchamp, fourth son of Thomas Earl of Warwick, but in what manner he succeeded to it is not certain, some writers affirming that it was by *entail*, and others by *purchase*: as Dugdale cites three records in proof that John de Hastings, Earl of Pembroke, in the 43rd Edw. III. settled, in case he died without issue of his body, the castle and lordship of Bergavenny, and other lands, on his cousin William de Beauchamp (*viz.* his mother's sister's son), in fee, provided he bore his arms, and endeavoured to obtain the title of Earl of Pembroke, and in case he should decline to do so, then, that his kinsman William de Clinton was to have them on the same conditions, it is most probable that William de Beauchamp obtained the castle in consequence of an entail. On the failure of issue of the Earl of Pembroke in 1389, the castle of Bergavenny must, if Dugdale's statement be correct, have devolved on William de Beauchamp, and when, if the tenure thereof gave a right to its possessor to demand a writ of summons to parliament, he ought immediately to have been summoned; but it was not until *three years* afterwards, namely, on the 23rd November, 16th Ric. II. 1392, that this William de Beauchamp was so summoned, in the writs of which year he is styled "William Beauchamp de Bergavenny." It may tend to illustrate the point how far that writ was issued *de jure* to this baron by his tenure of Abergavenny Castle, to inquire whether he was raised from comparative obscurity to importance by having succeeded to those lands, and also whether any other cause can be assigned for his being described "De Bergavenny" in the writ of summons, than his being summoned in consequence of the tenure

<sup>1</sup> *Rot. Parl.* vol. i. p. 267.

of that castle. In answer to the first question, it can be satisfactorily proved, that though he was never summoned to parliament until three years after he succeeded to those lands, he had been for many years preceding a personage of considerable reputation. He was the younger son of a powerful earl, and as early as the 40th Edw. III. distinguished himself as a soldier in the wars of France; from which period to the time when he was summoned to parliament, he constantly filled some office of the highest trust, and was daily adding to the fame which his military prowess had obtained for him: he was then, likewise, a Knight of the Garter, and Lord Chamberlain to the King, and undoubtedly stood high in the estimation of his Sovereign, circumstances which tend to establish that the lands to which he succeeded, in 1389, could scarcely have increased his importance; and it is as likely that he would have been summoned to parliament had he never possessed them, as that the tenure of them was the sole cause to which the writ of summons is to be attributed. That at the period in which he lived, the increase of estates rendered an individual so far of greater importance, as they enabled him the better to support a dignity, and consequently that he was the more likely to have been created a peer *after* such addition to his revenues than before, cannot be denied; and the fact of persons of extensive landed property being generally included in writs of summons, may be accounted for on the same ground; but this by no means proves, that to the tenure of such lands a right *de jure* was attached, to demand a writ of summons to parliament. Even at the present day, the dignity of the peerage is often conferred on extensive landed proprietors, and apparently for the same reason; but as it does not now follow that, though created on account of their possessions, such possessions necessarily give a *right* to the dignity, it is probable that a similar principle prevailed in earlier periods of our history.

With respect to William de Beauchamp having been styled in the writ "De Bergavenny," it has been proved<sup>1</sup> that such additions to names in writs of summons before the reign of Henry VI. were in-

<sup>1</sup> See *Synopsis of the Peerage*, vol. i. pp. 10, 11 note; 121, 122; 206, 207 notes; 283, 284.

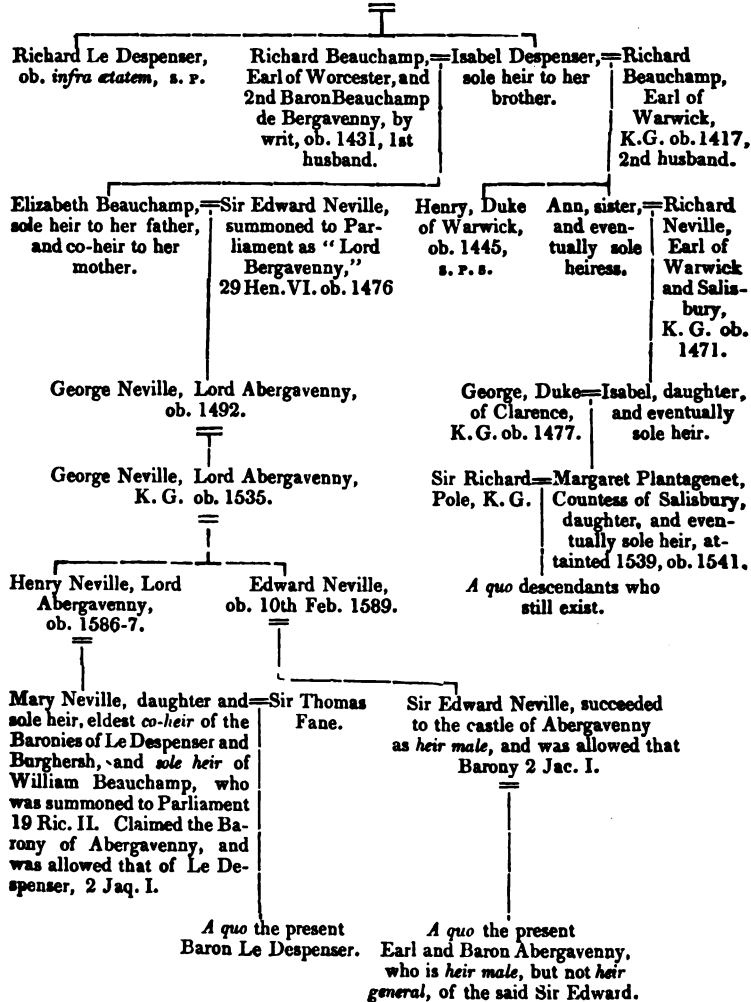
troduced solely to distinguish individuals of the same name from each other, and that they were never intended to mean the title of the dignity. At the same period when the writ was issued to this baron, there was a John de Beauchamp de Kydderminster, who was summoned to parliament, and who was always described in the writs by the addition "De Kydderminster"; and in previous reigns two barons of the name of Beauchamp had been summoned, the one being styled in the writs "De Somerset," and the other "De Warrewyk;" hence there does not appear, so far as such designations in writs allow of an inference, any greater reason for considering that the title intended to have been conferred on William de Beauchamp in the 19th Rich. II. was the barony of *Bergavenny*, than that either of the other personages alluded to was Baron *Kydderminster*, Baron *Somerset*, or Baron *Warwick*.

Whatever may have been the title intended to have been conferred on William de Beauchamp, the writ under which he sat is that which created the barony inherited by his descendants. His son was created Earl of Worcester in 1420, and dying without issue male in 1451, the barony devolved on his daughter and heir Elizabeth, the wife of Sir Edward Neville, who was summoned to parliament, *jure uxoris*, in the 29th Hen. VI. by the style of "*Edward Nevill, Dominus de Bergavenny*," or "*Edward Nevill de Bergavenny*." The introduction of the word "*Dominus de Bergavenny*," may perhaps be deemed to render the title of that barony "*Bergavenny*," and as such it has ever since been denominated. From this George Neville the dignity descended to his great grandson, Henry Neville, who died without issue male in 1587, and when the barony created by the writ of 16th Rich. II. to William de Beauchamp, and the *co-heirship* of the baronies of Despencer and Burghersh, which were acquired by the marriage of Richard Beauchamp Earl of Worcester with Isabel, daughter and co-heir of Thomas Baron Despencer, devolved on his daughter and heir Elizabeth, the wife of Sir Thomas Fane. A dispute on the succession to those dignities arose between the said Elizabeth and Edward Neville, the heir male of her father: the former contending that the barony of *Bergavenny* was a personal dignity, and the latter that it was attached to the tenure of the castle of *Bergavenny*, of

which, in consequence of an entail, he was seised. This claim', which has been frequently noticed, is important in consequence of

: Whenever this case has been alluded to, it has been generally considered that Lady Fane was the *sole* heir of the Barons Despenser; but that this was not the fact, the following pedigree, which also illustrates the claim to the Barony of Abergavenny, will show :—

Thomas Lord Le Despenser, and Earl of Gloucester,  
beheaded and attainted 1400.



the extraordinary decision formed on it, which has more the character of an amicable adjustment, referring to the feelings and convenience of the parties, than as having been regulated by any legal principle<sup>1</sup>. In the discussion the question of baronies by tenure was necessarily agitated, for on it Neville's pretensions were grounded; and after many hearings, the House resolved,

"That the question seemed nevertheless not so perfectly and exactly resolved, as might give clear and undoubted satisfaction to all the consciences or judgments of all the lords, for the precise point of right; and yet so much was shown and alleged on each side, as in the opinion of the House, if it might stand with the King's good pleasure and grace, made them both capable and worthy of honour. It was therefore moved and so agreed, that information should be given unto the King's Majesty of all the proceedings of the said court in the matter; and that humble suit should be made to his Majesty from the Lords, for the ennobling of both parties by way of restitution; the one to the said barony of Abergavenny, and the ancient place belonging to the same, and the other to the barony of Le Despenser<sup>2</sup>."

This resolution was, in other words, an acknowledgment that the case was one of great difficulty; that the Peers could form no satisfactory conclusion upon it; that both parties were, in the opinion of the House, "capable and worthy of the dignity claimed, if it might stand with the King's pleasure;" and that the whole of the proceedings should be referred to his Majesty; and it recommended that both parties should be ennobled, giving the barony in dispute to the

<sup>1</sup> On this decision the Lords' Committees in their Third Report, p. 216, observe :

"The proceedings respecting the claims of the dignity of Baron Abergavenny in the reign of James the First, have also been represented as showing, that even at that time the possession of a barony was considered as giving the person who held that possession a right to a writ of summons to parliament as a baron, by force of the ancient law of the land. *But there was no decision on the question of right, and the proceedings terminated in a compromise between contending parties, founded on no principle*; and the precedence finally given to the dignity of Baron Le Despenser, avowedly a mere personal dignity, derived from a writ in the 49th Hen. III., was utterly inconsistent with the right to a dignity of baron claimed in respect of tenure of the barony of Abergavenny, which was a barony long before the 49th Hen. III."

<sup>2</sup> See *First Report of the Lords' Committees on the Dignity of a Peer of the Realm*, p. 436, et seq. for some valuable remarks on this case.

one, and that of Le Despenser to the other. His Majesty agreed to the wishes of the House, but required it to decide to which the barony of Abergavenny should be adjudged. This being put to the vote, the majority decided that the barony of Abergavenny should be allowed to the heir male, in consequence of which Edward Neville received a writ to parliament, and he took his seat in the same place as that in which the last Baron Abergavenny sat.

It is impossible to consider this decision as bearing upon the general question of baronies by tenure, though, as far as any inference is to be drawn from it, it affords evidence that it was by no means a settled point, that such baronies were then in existence. The admission of Edward Neville into the place of the ancient barony, was certainly an acknowledgment by the House, that he was seised of that dignity; but it did not in its resolution in any degree admit that he had a *right* to the barony, unless the King allowed it to him. If such *right* was vested in him by the tenure of the castle, the Crown had not legally the power to deny it; and therefore the resolution of the House must be deemed to convey the opinion that no such right, *de jure*, was attached to the tenure of the castle, especially as their Lordships left it entirely to the King to determine whether either or both the parties should be ennobled by way of restitution, and also whether the barony of Despenser should be given to Neville, and Abergavenny to Lady Fane, or *vice versâ*. In the precedence assigned to the Barons Abergavenny and Despenser after this decision, an anomaly is to be found entirely at variance with the idea that the former derived his dignity from the tenure of the castle of Bergavenny; for, if it was derived from the tenure of that castle, his precedence would certainly be above that of Despenser, which barony was considered to have been created by the writ of 49th Henry III., the castle of Bergavenny having conferred a barony on its possessor long before that period; and if it was deemed to have arisen from a writ of summons, the earliest writ under which Edward Neville could have claimed was that to Richard Beauchamp in the 16th Ric. II. *one hundred and thirty years* subsequent to the creation of the barony of Despenser, which would have placed him below many barons of whom he took precedence. But if the barony of Abergavenny was



attached to the tenure of that castle, it is an extraordinary fact that neither Richard Beauchamp, who succeeded his father in 1410, and was created Earl of Worcester in 1420, nor Edward Neville, his son in law, nor George Neville, son of the said Edward, nor George his son, was ever seised of that territory<sup>1</sup>, so that though each of the three persons last named was regularly summoned to parliament as Lord Abergavenny, they had no right to such writs of summons, if the principle then prevailed that the dignity was attached to the tenure of the castle. This circumstance is strong evidence that the dignity possessed by each of the individuals in question was merely a *personal dignity*, derived from the writ of summons to their ancestor, William Beauchamp, in the 16th Ric. II.; and moreover it appears from the seal of Richard Neville, Earl of Warwick and Salisbury<sup>2</sup>, in the reign of Edward the Fourth, that that nobleman then styled himself Lord Bergavenny, the legend thereon being, "Sigillum Ricardi Neville, Comitis Warrewici, Domini de Bergavenny." Since the decision in the reign of James the First, the barony of Abergavenny has been allowed to the heir *male* of the said Edward Neville, without any question having been raised on the subject.

**CASE OF ROOS** In the 13th Jac. I., about nine years after the Abergavenny case, the question of baronies by tenure was again agitated. William Cecill, son of Lord Burleigh, and grandson of the Earl of Exeter, being heir general of the Earl of Rutland, Baron Roos, claimed the barony of Roos by petition to the King, which claim was discussed before the Commissioners for executing the office of Earl Marshal in April, 1616. The petition was, however, opposed by the Earl of Rutland, the heir male of the last earl, on the ground that the earldom of Rutland attracted the barony, and that he was seised of the barony of Hamlake, by the tenure of which the family of Roos had been anciently barons of the realm. Those lands were acquired by Peter de Roos in the reign of Henry

<sup>1</sup> Collins's *Precedents of Baronies by Writ*, p. 96. See also *First Report of the Lords' Committees on the Dignity of a Peer of the Realm*, p. 443.

<sup>2</sup> Attached to a deed, abstracted in the Visitation of Huntingdonshire in 1613, dated 1st Feb. 4th Edw. IV. 1465. Cottonian MSS. Julius, F. viii. f. 33.

the First, whose descendants were summoned to parliament in the 49th Hen. III. and successively till the 1st Edw. IV. The barony fell into abeyance in 1508, and so remained until the 7th Hen. VIII., when Thomas Manners, then the eldest co-heir, and eventually sole heir, of the last baron, was summoned to parliament as Lord Roos; but the earl contended that the said parties were summoned in respect of their seisin of that territory which was holden "per servitium militare, viz., unius baroniæ integræ," and that he being then seised of the same was entitled to the dignity<sup>1</sup>. The decision was, however, in favour of William Cecil, the heir general<sup>2</sup>, though it somewhat resembled the proceedings in the case of Abergavenny, as the King conferred a new barony of the same name on the other party "to reconcile the variance between them."

The Lords' Committees thus state the subsequent descent of that title; the case of the baronies of Bolebec, Sandford, and Badlesmere; and the claim to the barony of Fitz Walter, by tenure.

By letters patent of the 20th July, 14th Jac. I., after "stating that in the record of summons to parliament, in the 49th of Henry the Third, Robert de Roos was summoned without any addition; that in

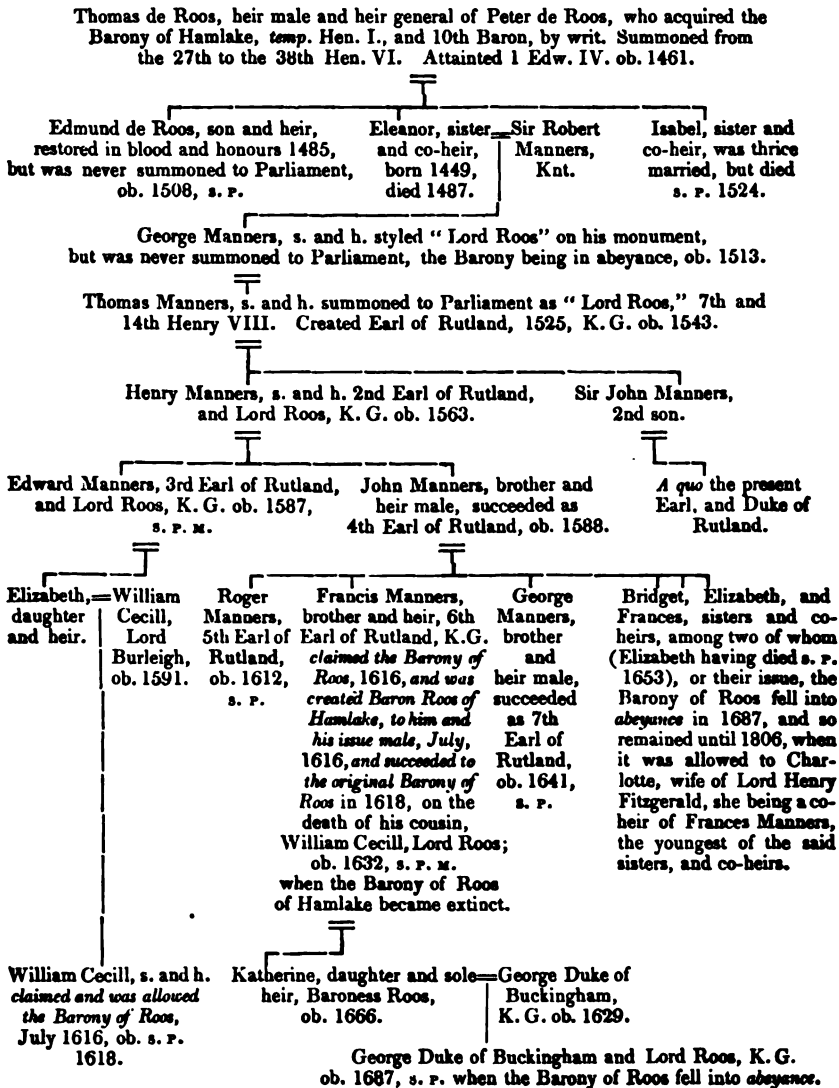
<sup>1</sup> *First Report of the Lords' Committee on the Dignity of a Peer of the Realm*, p. 444. Collins's *Precedents*, p. 162, et seq. It was observed by Sir Francis Bacon, then Attorney General, on this occasion, "to speak of barons before any Parliament Rolls are now extant, is to rumble in the dust of antiquity, and to cast a mist before our eyes. That barons were not tied to places doth appear by the Earl of Shrewsbury's case, but that it was an honour invested in the blood; and though the capital seat of the barony were alienated yet the barony was not extinct." The remark of Sir Randolph Crew, afterwards Chief Justice of the King's Bench, is strictly applicable to the claim to the barony of Berkeley. "If baronies were tied to lands, an earl, giving the seat of barony to a younger son, should make a baron, which none can do but the King himself."—Collins's *Precedents*, p. 170.

<sup>2</sup> The following extract from a letter, dated on the 13th July, 1615, is perhaps deserving of insertion.

"There was some question at Court on Sunday, for that the Lord Roos, by the Lord Chamberlain's appointment, carried the sword before the King; whereto some noblemen tooke exceptions, as being a kind of determining the business betwixt him and the Earl of Rutland. The matter was argued eagerly before the King; but Sir Robert Cotton, that hath ever some old precedent in store made proof that Knights, and Lords, that were not of the Parliament, have at times carried the sword."—Nichols' *Progresses of James I.* vol. iii. p. 95, from Birch's MSS. in the British Museum, No. 41 3.

the reign of Edward the First there was given to the name of Lord Roos<sup>1</sup>

<sup>1</sup> The points of the case are best illustrated by a pedigree :



the addition of Hamlake, and that other additions distinguished several baronies of Roos ; wherefore, and because the land and barony of Hamlake was conveyed to the Earl of Rutland, and the principal most ancient seat of Roos, in Holderness, was descended to William Cecil as heir general ; the King therefore accepted and declared William Cecil to be Lord Roos, and to have the ancient seat and place of Lord Roos, in parliament and other assemblies ; and that Francis Earl of Rutland should be accepted, declared, and called Lord Roos of Hamlake, and his son and heir, according to the laudable custom of England, should enjoy the said name, title, and dignity of Lord Roos of Hamlake, Trusbut, and Belvoir, in parliament and other assemblies. Cecil dying without issue, the dignity reverted to the Earls of Rutland, and was claimed by the Duke of Buckingham, in the reign of Charles the Second, as heir general of the then last Earl of Rutland, the duke being at that time also seised of Hamlake. By failure of issue of the duke, the title again reverting to the Earls of Rutland, without the barony of Hamlake, and being again claimed by the heirs general, was finally decided by the House to be a personal dignity merely, and in abeyance between co-heirs, descendants of sisters of Francis sixth Earl of Rutland. It could not have been a territorial dignity in respect of the lordship of Roos, as that was holden of the honour of Albemarle, and not of the King in chief as of his Crown. If this last decision was well founded, whether the dignity was derived from Robert de Roos, summoned in the 49th of Henry the Third, or from William Roos who was summoned in the 23rd of Edward the First, the person first summoned must have been deemed to have acquired thereby a right to a personal dignity, independent of tenure."

BARONIES OF BOLBECK,  
BADLESMERE, and  
SANDFORD.

" In the reign of Charles the First, the titles of Bolbeck, Sandford, and Badlesmere, were claimed by the Earl of Oxford, and the Lady Willoughby ; and the House, on the opinion of the judges, certified to the King that those titles were in abeyance between the four co-heirs of a former Earl of Oxford. The judges and the House, therefore, must have conceived that the titles of Bolbec, Sandford, and Badlesmere, were all personal dignities<sup>1</sup>. The Com-

<sup>1</sup> See page 286, *ante*.

mittee have not discovered that any person ever was summoned to parliament under whom the titles of Bolebec or Sandford might be claimed. The Earls of Oxford had become entitled, by descent, to the property styled the barony of Bolebec, by marriage of Robert Earl of Oxford with Isabella, sister and heir of Walter de Bolebeck; and on her death, Hugh Earl of Oxford had livery of her lands, as her son and heir, in the 29th of Henry the Third<sup>1</sup>. They became entitled to the property of Gilbert de Sandford by marriage of Robert Earl of Oxford, son of Earl Hugh, with Alicia daughter and heir of Gilbert. They became entitled to the property of Giles de Badlesmere, summoned to parliament in the 9th of Edward the Third, by marriage of John Earl of Oxford, grandson of Robert and Alicia Sandford, with Matilda, one of the sisters and co-heirs of Giles de Badlesmere, and had, as her purparty, the manor of Badlesmere. The property of this family was sometimes called the barony of Badlesmere, and that of the Bolbec family was called the barony of Bolbec; but there does not appear to have been any property of Sandford called a barony. The opinion of the judges with respect to the titles of Bolbec, Sandford, and Badlesmere must, however, have been given with little or no investigation of the rights to those dignities; and therefore must have been founded on a general opinion, that baronies, however ancient, were then to be considered as mere personal dignities; otherwise they could not have been in abeyance, or in the disposal of the King, as the persons actually seised of the land, if any, which gave right to the first Barons Bolbec, Sandford, and Badlesmere, to be summoned to par-

<sup>1</sup> Such is the statement of Dugdale and other genealogical writers, but it is nearly certain, from a charter in the British Museum, that she married Alberic, 2nd Earl of Oxford, who died in 1215, *s. p.* It is possible that she was afterwards the wife of Robert, 3rd earl, his brother and heir; but this is not likely, because it appears that Hugh, the 4th earl, son and heir of the said Robert, was of full age in the 15th Hen. III. 1230, only fifteen years after the death of Alberic, 2nd earl. The charter alluded to is without date, nor can the period when it was written be ascertained from internal evidence, excepting that it seems to have been during the life time of Alberic, the 1st earl, who died in the 6th Ric. I. 1194-5.

" Albericus de Ver filius Alberici Comitis et femina sua Isabel filia Walteri de Bolebech, &c. Sciatis omnes quod ego et Ysabel de Bolebech uxor mea concessimus, &c." Ancient Charters, marked 37 C. 3.—See some remarks on this subject in the *Retrospective Review*, New Series, vol. i. p. 139.

liament, must have been entitled to those dignities by reason of tenure; and the judges having made no inquiry with respect to those lands, it must be presumed that they considered such inquiry as unnecessary."

**BARONY of FITZWALTER.** "In the reign of Charles the Second, a claim was made to the dignity of Baron Fitzwalter. It was claimed by Robert Cheeke, as one of the co-heirs of the whole blood of the last Earl of Sussex, who was, as Cheeke contended, also Baron Fitzwalter; and it seems that he also set up some claim to the barony of Fitzwalter by reason of tenure, though the Committee have not been able to ascertain the grounds of that claim. The dignity was also claimed by Henry Mildmay, as heir general of Robert Fitzwalter, summoned to parliament in the 23rd of Edward the First; and he claimed the dignity, therefore, by virtue of the writ of summons, as conferring a descendible right to the heirs of Robert Fitzwalter so summoned to parliament. The petitions of both claimants were referred by the King to the House in August, 1660; and on the death of Henry Mildmay a petition of his brother Benjamin Mildmay, to the same effect, was referred to the House. The parliament having been prorogued, and afterwards dissolved, Henry Mildmay again petitioned the King, and his Majesty ordered that the matter of the petition should be heard before his Majesty in council, and Robert Cheeke and all persons concerned were to attend. It appears by the order of council from which this statement is taken, that the King afterwards ordered the two chief justices, Sir John Keeling, and Sir Jonn Vaughan, and the Chief Baron, Sir Matthew Hale, with his Chief Serjeant, Attorney and Solicitor General, and others his learned counsel, to attend, on the 19th of January, 1669, the discussion of the claims before the King in council. Accordingly, on that day, his Majesty being in council, and the judges and king's counsel attending, and counsel also attending for Mildmay and Cheeke, it appeared that Mildmay deduced his descent from Robert Fitzwalter, summoned to parliament in the 23rd of Edward the First: that Elizabeth, sole daughter and heir of Walter Lord Fitzwalter, last heir male of that surname, married Sir John Ratcliffe,

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whose son and heir, John, was summoned to parliament, by the title of Lord Fitzwalter, in the 1st of Hen VIII., and was afterwards created Earl of Sussex; and that he had two sons, Henry Earl of Sussex, and Sir Humphrey Ratcliffe; that Henry had one son, Robert Earl of Sussex, who died without issue, and one daughter, Lady Francis, wife of Sir Thomas Mildmay, great grandfather of the petitioner Benjamin Mildmay. Sir Humphrey Ratcliffe, the younger son of the first Earl of Sussex, had issue, Edward, who, on the death of Robert Earl of Sussex, became Earl of Sussex, and several daughters, of whom Frances was ancestor of Cheeke, the other claimant. Benjamin Mildmay therefore claimed as cousin and heir general of Robert first Lord Fitzwalter, in the direct line, as being a barony by writ. But the counsel for Cheeke affirmed, that the barony was a barony by tenure, and ought to go along with the land; upon which, the parties being ordered to withdraw, *the nature of a barony by tenure being discoursed, it was found to have been discontinued for many ages, and not in being; and so not fit to be revived, or to admit any pretence of right to succession thereupon. And the pretence of a barony by tenure, being declared, for weighty reasons, not to be insisted on,* the counsel were called in, and the counsel for Cheeke insisted that the barony was merged in the earldom by coming to Edward last Earl of Sussex, who died without issue; to disprove which, the counsel for Mildmay produced the Report and opinions of the judges to the House in 1625, in the case of the Earl of Oxford, and Lord Willoughby, and the concurrence of the House therewith; and then Cheeke raised the question, whether the half blood was any impediment to the descent of a dignity, which was answered by producing the order of the House on the petition of Longville for the barony of Grey; and the question being put to the judges, and they agreeing that the half blood was no impediment to the descent of a dignity to an heir general, and that if a baron in fee simple be made an earl, the barony will descend to the heirs general, whether the earldom continue or be extinct, with which opinion and resolution his Majesty being fully satisfied, it was ordered that the petitioner should be admitted to address his Majesty, for his writ to sit in the House of Peers as Baron Fitzwalter.

" On this decision of the King in council, assisted by the Lord Keeper, the Lord Ashley, afterwards Earl of Shaftesbury, and the Chief Justices, Keeling and Vaughan, and Chief Baron Hale, a writ issued, summoning Benjamin Mildmay to parliament as Lord Fitzwalter; and he took his seat as junior baron of the reign of Edward the First, with a saving of his right.

" It is observable that Benjamin Mildmay founded his claim on the writ of summons to Robert Fitzwalter, in the 23rd of Edward the First, the most ancient evidence remaining of summons to parliament, except the roll of the 49th of Henry the Third, when probably no baron was summoned to parliament except those who were favourable to the Earl of Leicester and his party. But Robert Fitzwalter, summoned in the 23rd of Edward the First, claimed his descent from Robert Fitzwalter, General of the Army of the Barons in the reign of King John, being the son and heir of Walter, son and heir of the general. Robert Fitzwalter the general, Walter his son, and Robert his grandson, certainly held lands as a barony.

" These acts of the Crown and decisions of the House, and particularly the order of the King in council of the 19th of January, 1669, made with the assistance of the Lord Keeper, the Lord Ashley, the two Chief Justices, Keeling and Vaughan, and the Chief Baron Hale (who was eminently learned in the ancient records of the country), after discussing the nature of a barony by tenure, and declaring that it was not fit to admit any pretence of right to succession thereupon, may perhaps be considered as amounting to a solemn opinion, that although in early times the right to a writ of summons to parliament as a baron may have been founded on tenure, a contrary practice had prevailed for ages; and that therefore it was not to be taken as then forming part of the constitutional law of the land. Indeed when the changes which apparently had taken place generally in the constitution of the legislative body after the Charter of John, and before the 23rd of Edward the First (when the summons to Robert Fitzwalter, under whom Mildmay claimed, appeared on record), and especially the division of the legislative body under the Crown into two distinct bodies, having separate characters, rights, and privileges, of which the Committee have found no trace before or in the Charter of John, are considered; and when it is also con-





sidered that many persons might, in and after the 23rd of Edward the First, have claimed a right to be summoned to parliament as barons, if that right had depended solely on the tenure of land ; and that the Crown, notwithstanding, unquestionably exercised the power of calling to such assemblies, as peers of the land, persons who had no claim to that dignity by tenure, whilst no person during the period from the 23rd of Edward the First till the reign of Henry the Sixth appears to have distinctly claimed, as a matter of right, a writ of summons to parliament, deriving that right from tenure independent of the power of the Crown ; it seems that the advisers of the order of council of the 19th of January, 1669, had at least strong grounds for the declaration on the subject contained in that order, and for giving the sanction of their opinions to the propriety of considering the writ of summons to Robert Fitzwalter, in the 23rd and subsequent years of the reign of Edward the First, and the writs issued to five persons successively as his heirs in the male line, as having given a presumptive right to the dignity of a Peer of the Realm, capable of being transmitted by descent to Elizabeth the only daughter of Walter, the last male in the direct line of descent from Robert, without regard to tenure ; and that the writ of summons to John Ratcliffe, the son and heir of Elizabeth, was founded on that prescriptive right, and not on tenure ; and that Mildmay, being, at the time of the decision, the heir of Elizabeth Fitzwalter, was entitled by the same prescriptive right to the same dignity. And although the decision in favour of Mildmay was not the judgment of the House, but of the King in council, and the King might by his prerogative have issued the writ under which Mildmay took his seat, yet it remained for the House to judge whether that writ did or did not give the precedence which it was intended to give ; and the House having admitted Mildmay to take his seat with a precedence which the writ under which he sat could not have given, if he had not been entitled to claim the writ under the right vested in his ancestor in the reign of Edward the First, the House in fact accepted the decision of the King in council as a proper decision, and considered the dignity vested in Mildmay as a mere personal dignity, derived to him from the writs of summons issued in the reign of Edward the First to the person whose heir he was. It may be

added, that the Lord Keeper, the Chief Justices, and the Chief Baron Sir Matthew Hale, when they advised the King in council to declare, that on discussion of the nature of a barony by tennre, it was found to have been discontinued for many ages and not in being, and so not fit to be revived, or to admit of any pretence of right to succession thereon, must have considered, that neither the case of Arundel, or that of Abergavenny, as those cases then stood, could affect the question'."

It does not appear on what grounds Mr. Cheeke's counsel claimed the barony of Fitz-Walter by tenure, for that barony was originally attached to the tenure of the manor of Little Dunmow in Essex, which was granted to Robert Fitz-Walter in the reign of Henry the First; and at the period when this claim was discussed it was not in the possession of either of the claimants<sup>1</sup>. This fact does not, however, in any degree lessen the weight of the decision of the King in council; for that decision not only refers to the case before it, but to the general principle of whether baronies by tenure were then in existence; and when it is considered that the resolution was formed by the advice of the Lord Chancellor, the two Chief Justices, and of the Chief Baron of the Exchequer, Sir Matthew Hale, whose intimate knowledge of subjects of that nature is justly noticed by the Lords' Committees; and that in the last case in which the question was agitated before the House of Lords, the decision was to some extent confirmatory of it, it may be assumed that no territorial possession in this country would now be held to constitute its possessor a baron of the realm.

**BARONY OF ROOS.** The latest instance in which a claim of this  
1805. nature was set up was in 1805, in the case of the  
barony of Roos, a claim to which was urged by Lady Henry Fitz-

<sup>1</sup> *First Report*, pp. 444 to 447.

<sup>2</sup> This manor descended from the family of Fitz-Walter to that of Ratcliffe, and from the latter to its representative, Sir Henry Mildmay of Moulsham, who was seised of it in 1629: in the latter part of the seventeenth century it was possessed by Sir Thomas May, who sold it to Sir James Hallett in 1700. A MS. note to the copy of Morant's Essex, in the College of Arms, states, that Sir John May mortgaged it before the year 1672 to Edward Eversfield, Esq.

gerald, as co-heir of the body of Robert de Roos, who was summoned to parliament in the 49th Hen. III.; the ancestors of which Robert (as has been before observed) were unquestionably barons of the realm by tenure, either of the manors of Hamlake or Trusbut, or the Castle of Belvoir, each of which was held of the Crown *in capite, per baroniam*. The manors of Hamlake and of Trusbut were alienated before the time when that claim was made; but the Honour and Castle of Belvoir were then held by the Duke of Rutland, who opposed Lady Henry Fitzgerald's petition on the ground that the barony of Roos was a barony by tenure, and that where an ancient baron, holding a baronial estate, *i. e.* a castle or manor held of the King by barony, was summoned to parliament, his title did not arise from the writ of summons, but from his barony, and he became a baron by tenure<sup>1</sup>. The House of Lords resolved, "that the Duke of Rutland was not entitled to the barony claimed on the part of the co-heirs of Robert de Roos."

Before these observations on Baronies by Tenure are concluded, it may be proper to notice, that in a treatise on dignities, entitled "The Magazine of Honour," which was revised by Sir John Doderidge, one of the Justices of the King's Bench in 1642, the opinion that baronies were attached to territorial possessions is urged with some force; and the following cases, which are there adduced in proof of it, merit a slight notice. It must, however, first be suggested, that writers on the subject of baronies by tenure appear, in most instances, to have fallen into the error of considering that when a person, who was seised of lands which, antecedent to the 23rd of Edw. I. rendered their possessor a baron of the realm, was summoned to parliament, it was *de jure* by the tenure of those lands, instead of its having solely arisen from the prerogative of the Crown, though perhaps the exercise of that prerogative in their favour may be attributed to the power and influence which such lands conferred on their owner.

KILPEC. Robert Waleron, who by tenure of the barony of

Kilpec is said to have been a baron by tenure, died in the 2nd Edw I. without issue, leaving Robert Waleron, son of his

<sup>1</sup> Cruise on Dignities, p. 48.

brother William, his next heir; yet, in consequence of Robert Waleron, who died in the 2nd Edw. I. having given to Alan de Plukenet, the son of Alice, sister of the said Robert, the castle, manor, and lordship of Kilpec, the said Alan was summoned to parliament. At the first view it must be admitted, that these circumstances support the opinion in proof of which they are adduced; for we find that Alan de Plukenet was included in the earliest writ of summons issued by Edw. I., namely, that of the 24th June, 23rd Edw. I., 1295, and was regularly summoned until the 5th Edw. II., about which year he died without issue; whilst there is no record of Robert Waleron, the heir of Robert, the last baron by tenure, having ever been summoned. In answer to this statement, it appears that the lordship of Kilpec was acquired by Robert Waleron, with his wife Isabel, the daughter and co-heir of Hugh Kilpec, and there is some doubt whether he was not a baron by tenure antecedent to his marriage. If the possession of the Castle of Kilpec, however, in the 23rd Edw. I., by Alan de Plukenet, entitled him to demand a writ of summons to parliament, it must be inferred, from this very case, that the practice was entirely changed early in the reign of Edward the Third; because the persons who inherited that castle after the death of the said Alan de Plukenet were never summoned to parliament.

**BARONY of** The barony of Deincourt is next cited in support  
**DEINCOURT.** of the same position. In this case Edmund Deincourt, who in 1257 succeeded to the lands by the tenure of which his father and ancestors were barons of the realm, was summoned to parliament from the 27th Edw. I. to the 20th Edw. II., but having no male issue, he obtained the king's licence to entail his lands on his nephew and heir *male*, William Deincourt, and which William succeeded to those lands accordingly, on the death of the said Edmund, in the 1st Edw. III. and was summoned to parliament from the 6th<sup>1</sup> to the 37th Edw. III. From these circumstances it has been contended, that the writ of summons of the 6th

<sup>1</sup> The Lords' Committees erroneously consider that he was not summoned until 20th Edw. III. *Third Report*, pp. 218, 219.

Edw. III. was issued to him in consequence of his having, by tenure of those lands, a prescriptive right to demand it; but it is suggested by the Lords' Committees in their Third Report<sup>1</sup>, that the extensive possessions of which he was seised probably caused the Crown to exercise its prerogative, by summoning him to parliament as a baron, which writ acted as a new creation, whilst the original barony created by the writ of 27th Edw. I. to Edmund Deincourt continued vested in Isabel, the granddaughter and heir of that person. There does not however appear to be any other cause for believing that the tenure of the lands of which Edmund Deincourt died seised gave a right to their possessor to demand a writ of summons to parliament beyond the *presumption*, that when William Deincourt was summoned, it was solely from the possession of them; whilst the facts, that the said Edmund was not summoned to parliament for four years after writs of summonses are recorded to have been generally issued<sup>2</sup>, and that William, on whom these lands were entailed, was not summoned for five years after he obtained possession of them, are considered by the Lords' Committees as evidence that no such right was attached to the tenure of those lands; but it must be remembered that many cases occur in which the heirs of barons by writ were not summoned for as great and even a much greater length of time after they succeeded to the dignity<sup>3</sup>.

**BARONY of** The barony of Burnell has been also adduced as  
**BURNELL.** proof that baronies in the reign of Edward III. were deemed to be dependant upon territorial possessions; for it is stated, that in that reign " John Handlo, in right of Maud his wife, was seised of the manor of Holgate, Acton Burnell, &c. for term of her life, remainder to Nicholas Handlo, alias Burnell, sonne to the said Maud and John, by a fine in the court levied, and that John Lovell was next heire of the said Maud and her first-borne sonne

<sup>1</sup> See p. 218 of that Report, where some valuable observations on the barony of Deincourt will be found.

<sup>2</sup> He was however summoned in the 22nd Edw. I.; but this Assembly was not a regular parliament.

<sup>3</sup> See notes, pp. 256, 257, *ante*.

by her first husband, and afterwards the said Nicholas was summoned among other Lords to the parliament, by reason of the fine aforesaid, and not the said John Lovel who was next heire." *Prima facie* this certainly appears a very strong instance in favor of the principle which it is cited to support; but on examination, though the pedigree is correctly stated, the circumstances of the case prove to be misrepresented, for neither the manors of Holgate nor Acton Burnell were ever held *per baroniam*; and consequently, as the possessors of them were not barons by tenure antecedent to the 23rd Edw. I. it is impossible that those lands could have conferred the dignity of a peer of parliament in the reign of Edward the Third. Edward Burnell, the brother of the said Maud, was the first baron of that family, he having been summoned to parliament from the 5th to the 8th Edward II. He died without issue, in the 9th Edward II. when the barony became extinct, but his lands devolved on the said Maud as his next heir. Her first husband, John Lovel, was a baron of parliament, to which barony his son succeeded, though he is not recorded to have been summoned to parliament; his son and successor John Lovel (grandson of Maud Burnell), was however repeatedly summoned. By her second husband, John Handlo, she had two sons, the younger of which, Nicholas, assumed his mother's maiden name of Burnell, probably in consequence of having succeeded to the lands of that family, and in the 24th Edward III. he was summoned to parliament; but admitting that he was then seised of the manors of Holgate and Acton Burnell under the entail mentioned in the "Magazine of Honour," no notice of which occurs in Dugdale's account of the family, they could not possibly, for the reason above stated, have conduced to his receiving a writ of summons, in any other way than by adding to his wealth and importance.

It remains only to be observed that from what has been advanced relative to Baronies by Tenure, and especially from the inquiry into those cases which most strongly support the opinion, that such baronies have existed in this country, not only at a period long subsequent to the 23rd Edward I. but even that they exist at the present time, the following inferences may, it is submitted, be drawn:

1st. That there is cause to believe, that in the reign of Edward the First, such individuals as were then seised of lands *per baroniam*, and by the tenure of which they and their ancestors had been barons of the realm, were not entitled *de jure* to a writ of summons to parliament.

2nd. That in the instances which are generally considered to establish the principle that a prescriptive right to a writ of summons was annexed to the tenure of certain lands, no *proof* of the fact has been adduced ; and that whatever may be the presumptive evidence in favor of such an hypothesis in the case of the barony of Berkeley *previous* to the 21st Henry VIII. no such inference can be drawn from any circumstance after that year.

3rd. That the same facts which tend to raise the presumption that the barony of Berkeley was attached to the tenure of Berkeley Castle are to be found with respect to dignities, which it is certain never were territorial baronies ; that notwithstanding the fact that the Barons Berkeley, since the 9th Hen. V., appear to have enjoyed the precedency which belongs to the writ issued to Thomas de Berkeley, in the 23rd Edw. I., the barony so created is vested in the heirs of Elizabeth Countess of Warwick, the daughter and heir of Thomas, 5th Lord Berkeley, who died in 1417 ; and that the barony which has descended to the late Earl of Berkeley, as heir general of Maurice de Berkeley, who was summoned to parliament in the 9th Hen. V., is the dignity created by that writ<sup>1</sup>.

4th. That neither the proceedings relative to the Earldom of Arundel, nor the statement in the charter creating the barony of l'Isle, prove that dignities were attached to territorial possessions in the reign of Henry the Sixth, but to some extent justify the opi-

<sup>1</sup> Towards the close of the last Session of Parliament, Sir John Shelley Sidney, as eldest co-heir of Elizabeth Countess of Warwick, presented a petition to the House of Lords, stating, that according to the law of the descent of baronies by writ, the Barony of Berkeley, created by writ in the 23rd Edw. I., was vested in the co-heirs of Elizabeth Countess of Warwick, and was now in abeyance among them ; and he, as the eldest of the said co-heirs, prayed that the proceedings on the petition of Colonel Berkeley might not prejudice their claims, but that the House would be pleased to reserve their rights.

nion that the lands there mentioned did not render their owners peers of the realm, without an express creation by the Crown.

5th. That the decision of the Abergavenny case, in the reign of James the First, did not establish that baronies by tenure were then in existence, or that that barony was one in right of tenure.

6th. That the decision in the case of the barony of Roos, in 1616, as well as in that of the baronies of Bolbeck, Sandford, and Badlesmere, *temp.* Car. I. is confirmatory of the opinion that baronies were not then considered to be attached to the tenure of lands, which before the 23rd Edw. I., rendered their possessors barons of the realm.

7th. That the resolution of the King and Privy Council in the case of the barony of Fitz Walter in 1669, "that no such baronies had for many ages existed," is not opposed by any decision before that period; and that in every instance since, which at all bore upon the question of baronies by tenure, the resolutions of the House of Lords have confirmed that of the Privy Council in 1669.

It would appear therefore, that claims on the ground of tenure have been repeatedly rejected, by express decisions either of the House of Lords, or of the Commissioners appointed to report on those claims; and as the Lords' Committees have most justly observed,

"If the dignity of peerage can now be considered as by law incident to any description of land, it must be dependent on seisin of such land; and it is evident that the unrestrained power of alienation, which would, as the law now stands, belong to the person seised of such land, would also give to that person the power of transferring the dignity of peerage to another, by alienation of the land to which this right is supposed to be incident; and that therefore the individual seised of such land, might, without the concurrence of the Crown, create a peer of the realm by his deed, with such conditions and limitations (consistent with the general law respecting the disposition of land) as such individual might think fit—that such alienation might be made by all the different modes by which alienations of land may by law now be made—that title to the land might also be gained by disseisin, and



the lawful title barred by non-claim—that, consequently, the title to a dignity of peerage, if incident to seisin of any particular description of land, might be subject to all the questions to which titles to land may be subject—that those questions must be tried in the ordinary courts of justice, by the ordinary modes of trial of titles to land—and that the title to the dignity could never be quieted, till the title to the land should be quieted, either by length of possession according to the provisions in the statutes for limitation of actions, or by judgment in a writ of right, subject to all the exceptions of infancy, lunacy, coverture, and fraud, to which the titles to land may be subject. And as the title to land can only be determined in the courts of ordinary jurisdiction, the question of peer or no peer, if it depended on the possession of land, could not be tried by the House; except as the House might inquire into the simple question of fact, whether the claimant was seised of the land, and whether the land was of the alleged description, or had the quality of giving right to the dignity in question.

“ But the existence of such a right as inherent in land would not only be liable to the inconveniences before stated, but would supersede the discretion of the Crown in selecting the persons on whom it might be thought fit to confer the dignity of peer of the realm, by giving to the possessor of the land so holden, the right to confer the dignity on any other person at his pleasure; and as the sale of the land must be as free as the power of alienation, the dignity of peer of the realm might become the object of barter, and be offered to the best bidder<sup>1</sup>. ”

Their Lordships' remarks are powerfully illustrated by the claim to the barony of Berkeley, for as the petitioner became possessed of the lands, by the tenure of which he claims, under the will of the last owner, that testator will, if the petition be successful, have *created* a peer of the realm; and as the present proprietor will enjoy the same privilege, the peerage may be augmented *ad infinitum*, by the mere transfer of the castle, it being repugnant to the present constitution of the House, that a man can once acquire a seat within its walls as a peer, without deriving an hereditary dignity from the writ addressed to him, and sitting under that writ.

<sup>1</sup> *First Report*, p. 397.

But there are two other resolutions of the House which have not yet been mentioned, *that seem fatal to claims of this nature*. On the 17th of February, 1646, in the case of the barony of Grey de Ruthyn, the House of Lords resolved, *nemine contradicente*, "that no person that hath any honour in him, and a peer of this realm, may alien or transfer the honour to any other person, and that no peer of this realm can drown or extinguish his honour, but that it descends to his descendants neither by surrender, grant, fine, nor any other conveyance;" and on the 18th of June, 1678, in the claim to the Viscountcy of Purbeck, the House also resolved, "that no fine now levied, nor at any time hereafter to be levied to the King, can bar such title of honour, or the right of any person claiming such title under him that levied or shall levy such fine."

These resolutions apply to the barony of Berkeley, because the petitioner has obtained the lands, by the tenure of which he claims, under *an alienation* and not by descent; and if the late Earl of Berkeley was, as is contended, Baron Berkeley by the tenure of Berkeley Castle, it may become a question how far the first of those resolutions could restrain the alienation of that castle from his heir. It is impossible, however, to believe that the House will, in violation of former resolutions, admit that the dignity of the peerage can now be alienated; for such a decision would in effect confer on the Claimant, his heirs, and assigns, if not on every other person who is seised of lands which were formerly held by barony, the power of creating peers at their pleasure; the dignity of the peerage would be lessened by the possibility of its being put up to sale; the Sovereign would be obliged to share his prerogative with his subjects; and that principle of the constitution which has reserved to the Crown alone the important privilege of bestowing honours would be violated.

APPENDIX No. IV.

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P A T E N T

CREATING

SIR ARTHUR PLANTAGENET VISCOUNT L'ISLE.

[Referred to in p. 39.]

“De creacōe Arthuri Plan- } Rex om̄ib' ad quas &c. salt'm.  
tagenet Militis Vic' Lysle. } Cum nos p' lras n'ras patentes  
quar' daf' est apud Knoll quintodecimo die Maij anno regni n'ri  
quinto g<sup>a</sup>ta & laudabilia obsequia que dīlcus & fidelis consiliarius  
n'r Carolus Brandon adtunc miles ordinis n'ri gart'ij nunc dux Suff'  
nob' multiplici' ante ea tempora impenderat indiesq' adtunc im-  
pendere non desistebat necnon circumspeccōem strenuitatem &  
fidelitatem ip̄ius Caroli intime considerantes ex c'ta sciencia & mero  
motu n'ris de gr̄a n'ra sp̄ali p'fatum Carolum ad statum g<sup>a</sup>dum  
dignitatem & honorem vicecomitis Lysley erex'im' & p'fec'im'  
ip̄mq' in vicecomitem Lysley tenore ear'dem lrar' patenciū p'fec'-  
im' & creav'im' eidemq' Carolo nomen stilum & titulum vicecomitis  
Lysley imposu'im' & p'bu'im' p' easdem lras n'ras patentes hend &  
tenend eadem statum g<sup>a</sup>dum dignitatem stilum titulum nomen &  
honorem p'fato Carolo & hered' masculis de corpore Elizabeth  
Grey *adtunc vicecomitis* Lysle p' p'fatum Carolum pcreat Volentes  
& p' p'c'as lras patentes concedentes p' nob' hered' & successorib'  
n'ris qd' p'fat' Carolus & hered' sui p'dc'i nomen statum g<sup>a</sup>dum dig-  
nitatem stilum titulum & honorem p'dict' successive gererent &  
herent & cor' quilt gereret & heret & p' nomen vicecomitis Lysley  
vocetent' & nuncupent' & quilt cor' vocetet' & nuncupet' Qd'q,

idem Carolus & hered sui p'dc'i successive vicecomit' Lysley in om'ib' tenerent' & ut vicecomit' Lysley tractarent' & reputarent' & eor' quilt teneret' tractaret' & reputaret' herentq' tenerent & possiderent dcus Carolus & hered sui p'dc'i & eor' quilt heret teneret & possideret sedem & locum in parliamentis & consilijis n'ris hered & successor' n'ror' infra regnū n'rm Angl int' alios vicecomites ut vic' Lysley Necnon dcus Carolus & hered sui p'dc'i gauderent & ut'ent' & eor' quilt gauderet & ut'et' p nomen vicecomit' Lysley om'ib' & singulis & talib' jurib' privilegijs p'eminencijs & immunitatib' in om'ib' statui vicecomit' rite & de jure ptinen' quib' cet'i vicecomites dci regni n'ri Angl ante ea tempora melius honorificencius & quietius usi sunt & gavisī seu adtunc gaudebunt & utebant' Et ult'ius de ub'iori grā n'ra & ut p'fatus Carolus & hered sui p'dc'i dcm statum vicecomitis decencius & honorificencius manutenere & supportare valerent dederim' & concesserim' p easdem lras n'ras patentes eidem Carolo & hered suis p'dc'is viginti marcas Hend levand & p'cipiend annuatim eidem Carolo & hered suis p'dc'is de exitib' revencoib' firmis finib' & pficuis de & in com' Warr' quoquo modo em'gen' acciden' sive pvenien' p manus vic' ejusdem com' p tempore existen' ad festa S'ci Michis & Pasche p equales porcoes put in eisdem lris n'ris patentib' plenius continet' Et quia p'fatus Carolus nunc dux Suff' ac nup vicecomes Lysle p eo qd' matrimoniū seu maritagiū int' ip'm ducem & p'fatam Elizabeth' Grey nup' vicecomitissam Lysle modo defunct' minime solempnizat' seu hit fuit sc'dm intencoem & voluntatem n'ras dco tempore confeccois lrar' n'rar' patenciu p'dcar' easdem lras n'ras patentes sibi in forma p'dca confectas nob' in cancellar' n'rar' restituit ibidem cancelland ad intencoem & effcm qd' nos alias lras n'ras patentes de & in p'missis dilco & fideli n'ro Arthuro Plantagenet militi in forma sequen' concedere dignaremr Nos nedum p'missa verumeciam g'ta & laudabilia obsequia que p'fatus Arthurus Plantagenet miles multipliciter nob' impendit indiesq' impendere intendit necnon circumspeccoem strenuitatem & fidelitate ip'ius Arthuri intime considerantes ac p eo qd' lre patentes p'dc'i in dca cancellaria n'ra cancellat existunt ad intencoem sup'dcam ut c'tam hem' scienciam de grā n'ra sp'ali ac ex c'ta sciencia & mero motu n'ris p'fatum Arthurum ad statum g'dum

dignitatem & honorem vicecomitis Lysle Erexim' creavim' nōia-  
vim' & p'fecim' ip̄mq' Arthorum in vicecomitem Lysle tenore  
p'senciū Erigim' nōiam' p'ficim' & cream' eidemq' Arthuro nomen  
stilum statum & titulum vicecomitis Lysle imposuim' dedim' & p'buim'  
ac p' p'sentes imponim' dam' & p'bem' H'end & tenend eadem sta-  
tum g'dum dignitatem stilum titulum nomen & honorem p'fato  
Arthuro & hered masculis *de corpore Elizabeth' ux'is ejus sororis &  
hered' Joh'is Grey nup' vicecomitis Lysle p'creatis sive p'creandis*  
Volentes & p' p'sentes concedentes p nob' hered & successorib'  
nris qd p'fatus Arthurus & hered masculi p'dc'e Elizabeth nomen  
statum g'dum dignitatem stilum titulum & honorem p'dict' succes-  
sive gerant & heant & eor' quilt gerat & heat & p nomen viceco-  
mitis Lysle successive vocitent' & nuncupent' & eor' quilt vocitet' &  
nuncupet' Qdq' idem Arthurus & hered masculi p'dc'e Elizabeth  
successive vicecomit' Lysle in omib' teneant' & ut vic' Lysle trac-  
tent' & reputent' & eor' quilt tenet' tractet' & reputet' heantq' te-  
neant & possideant d'cus Arthurus & hered masculi p'dc'i & eor'  
quilt heat teneat & possideat Sedem & locum in parliaments &  
consilij nris hered & successor' nrror' infra regnū nrm Angl int'  
alios vicecomites ut vicecomites Lysle necnon d'cus Arthurus &  
hered masculi p'dc'i gaudeant & utant' & eor' quilt gaudeat &  
utat' p nomen vicecomit' Lysle omib' & singulis talib' jurib' privi-  
legijs p'eminenciis & im'unitat' in om'ib' statui vicecomitis rite & de  
jure ptinentib' quib' cet'i vicecomites d'ci regni nri Angl ante hec  
tempora melius honorificencius & quiecius usi sunt & gavisī seu in  
p'senti gaudeat & utunt' Et insup de ub'iori grā nra & ut p'fatus  
Arthurus & hered masculi p'dc'i dcm statum vicecomitis decencius  
& honorificencius manutenere & supportare valeant Dedim' & con-  
cessim' ac p' p'sentes dam' & concedim' eidem Arthuro & hered  
masculis p'dc'is viginti marcas p annū a festo Pasche ultimo p'tito  
hend' levand & p'cipiend' annuatim dcam annuitatem viginti marcar'  
a d'co festo ultimo p'tito eidem Arthuro & hered masculis p'dc'is de  
exitib' revencoib' firmis finib' & p'ficuis quibuscunq' de & in d'co  
com' nro Warr' & com' nro Leyc' quoquo modo em'gen' acciden'  
crescen' sive p'venien' p' manus vic' eor'dem com' p' tempore ex-  
isten' ad festa Sc'i Michis archi & Pasche p' equales porc'oes Et  
hoc absq' aliquo feodo magno vel parvo in cancellar' nra aut in ha-

nap'io ejusdem cancellarie n're p' p'sentib' lris n'ris patentib' ad  
 usum n'rm aliqualit' capiend' seu solvend' p't' viginti solidos & qua-  
 tuor denarios fm Eo qd' exp'ssa mencio de v'o valore annuū aut  
 de c'titudine p'missor' seu de alijs donis sive concessionib' p' nos  
 p'fato Arthuro Plantagenet ante hec tempora fact' in p'sentib' mi-  
 ne factm̃ existit aut aliquo statuto actu ordinac'oe p'visione sive  
 restric'oe inde incont'riū fact' edif' ordinat' sive p'vis aut aliqua  
 alia re causa vel mat'ia quacunq' in aliquo non obstant' In cujus, &c.  
 T. R. apud Westm̃ xxv. die Aprilis. p' ip'm Regem & de daf &c.

APPENDIX V.

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PATENT CREATING ALICE LADY DUDLEY, WIFE OF  
SIR ROBERT DUDLEY, DUCHESS DUDLEY.

[Referred to in page 172.]

“ CHARLES R.

“ CHARLES, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Fayth, &c.: To all archbishops, dukes, marquesses, earles, viscounts, bishops, barons, knights, and all other our loving subjects, to whome these our letters shall come, greeting. Whereas in or about the beginning of the reigne of our deare Father K. James, of famous memory, there was a suit commenced in our High Court of Starr Chamber against S<sup>r</sup> Robert Dudley, K<sup>t</sup>. and others, for pretending himself to be lawfull heire to the honours and lands of the earldomes of Warwick & Leicester, as son and heire of the body of Rob<sup>t</sup> late Earle of Leicester, lawfully begotten upon the Lady Douglas his mother, wife to the said late Earle of Leicester, and all proceedings stayed in the Ecclesiasticall Courte in which the said suit depended, for proofes of his legitimation: yet nevertheless did the said Court vouchsafe libertie to the said S<sup>r</sup> Robert to examine witnesses in the said Court of Starr Chamber, in order to the making good of his legitimacy. And divers witnesses were examined there accordingly, whereupon by full testimony upon oath partly made by the said Lady Douglas her selfe, and partly by divers other persons of quality and credit, who were present at y<sup>e</sup> marriage with the said late Earl of Leicester, by a lawfull minister, according to the forme of matrimony then by law established in the Church of England; and the said S<sup>r</sup> Robert and his mother owned by the said late Earle of Leicester as his law-

full wife and sonne, as by many of the said depositions remayning upon record in our said Court still appeare, (which we have caused to be perused for our better satisfaction therein;) but a speciall order being made that y<sup>e</sup> said depositions should be sealed up and no copies thereof taken without leave, did cause him the said S<sup>r</sup> Robert to leave this our kingdome; whereof his adversaries taking advantage procured a speciall Privy Seal to be sent unto him, cōmanding his returne into England, which he not obeying (because his honours and lands were denyed unto him) all his lands were therefore seized on to the King our Father's use. And not long afterwards Prince Henry our deare brother, deceased, made overture to the said S<sup>r</sup> Robert by special instruments to obtaine his title by purchase of and in Kenillworth Castle in our county of Warwicke, and his manours, parkes, and chases belonging to the same, which upon a great undervalue amounted (as we are credibly informed) to about fifty thousand pounds, but were bought by the said Prince our brother in consideration of fourteen thousand five hundred pounds, and upon his faithfull engagement and promise of his princely favour unto the said S<sup>r</sup> Robert in the said cause to restore him both in honours and fortunes. And thereupon certain deeds were sealed in the nyynth yeare of the reigne of our said Father, and fynes also then were levyed, setling the inheritance thereof in the sayd Prince our brother and his heires. But the sayd Prince our brother departing this life, there was not above three thousand pounds of the said summe of fourteen thousand five hundred pounds, ever paid (if any at all) to the said S<sup>r</sup> Robert's hands. And we our selves, as heire to the said Prince our brother, came to the possession thereof. And it appearing to our councell, that the said Alice Lady Dudley, wife of the sayd S<sup>r</sup> Robert, had an estate of inheritance of and in the same, descendable unto her posterity, in the nyneteenth yeare of our said deare Father's reigne, an act of parliam<sup>t</sup> was passed to enable the said Lady Alice, wife to the said S<sup>r</sup> Robert, to aliene her estate which she had by y<sup>e</sup> said S<sup>r</sup> Robert therein, from her children by the said S<sup>r</sup> Robert, as if she had been a feme sole; which accordingly she did in the nyneteenth yeare of our said deare Father's reigne, in consideration of four thousand pounds, and further payments yearly to be made by us to her out of our Exche-



quer and the said castle and lands, which have not been accordingly paid unto her by us for many yeares, to the damage of the said Lady Alice and her children, to a very great value. Which S<sup>r</sup> Robert settling himselfe in Italy within the territories of the great Duke of Tuscany, (from whome he had extraordinary esteeme,) he was so much favoured by the Emperour Ferdinand the 2nd, as that being a person not only eminent for his great learning and bloud, but for sundry rare endowments (as was well knowne,) he had by letters pattents from His Imperiall Ma<sup>ty</sup> y<sup>e</sup> title of a duke given unto him, to be used by himselfe and his heires for ever, throughout all the dominions of the sacred empire, which L<sup>ty</sup> Pat<sup>ty</sup> have been perused by our late Earle Marshall & Heraulds.

“ And whereas our deare Father, not knowing the truth of the lawfull birth of the said S<sup>r</sup> Robert, (as we piously beleive,) granted away the titles of the said earldomes to others, which we now hold not fitt to call in question, nor ravell into our deceased Father's actions, especially they having been so long enjoyed by those families to whom the said honours were granted, which we do not intend to alter; and yet we, having a very deep sense of the great injuries done to the said S<sup>r</sup> Rob<sup>t</sup> Dudley and the Lady Alice Dudley and their children, and that we are of opinion that in justice and equity the possessions so taken from them do rightly belong unto them, or full satisfactio<sup>n</sup> for the same, and holding our selves in honour and conscience obliged to make them reparation now as farr as our present abilitie will enable us; and also taking into our consideration the great estate which she the said Lady Alice Dudley had in Kenilworth, and sold at our desires to us at a very great undervalue, and yet not performed or satisfied to many thousand pounds damage; and we also casting our princely eye upon the faythfull services done unto us by S<sup>r</sup> Richard Leveson, Knight of the Bathe, (who married y<sup>e</sup> Lady Katherine, one of the daughters of the said duke by his sayd wife the Lady Alice Dudley,) and also the great services which Robert Holburne, Esq<sup>r</sup>, hath done to us by his learned pen and otherwise (which said Robert Holburne hath married the Lady Anne, one other of the daughters of the said duke by his said wife the Lady Alice Dudley,) we have conceived our selves bound in honour and conscience to give y<sup>e</sup> said Lady Alice and her chidren such

honour and precedenciès as is or are due to them in marriage or bloud ; and therefore we do not only give and grant unto the said Lady Alice Dudley the title of Dutchess Dudley for her life in England and other our realmes and dominions, with such precedencies as she might have had if she had lived in the dominions of the sacred empire, (as a marke of our favour unto her, and out of our prerogative royall, which we will not have drawn into dispute;) but we also do further grant unto the Lady Katherine and Lady Anne her daughters, the places, titles, and precedencies of the said duke's daughters, as from the time of their said father's creation, during their respective lives, not only in England, but in all other our kingdomes and dominions, as a testimony of our princely favour and grace unto them, conceiving our selves obliged to do much more for them if it were in our power in these unhappy times of distraction ; and we require all persons of honour, and other our loving subjects, especially our Earle Marshall, Heraulds, and Officers at Arms, to take notice of this our princely pleasure, and to governe themselves accordingly, and to cause the said places and precedencies to be quietly enjoyed, according to this our gracious intention, as they do tender our displeasure, and will answer the contempt thereof at their perells ; and we further cōmand and require that our said Heraulds do make entries of this our pleasure and graunt in their offices accordingly.

“ In witnesse whereof we have caused these our letters to be made patents. Witnesse our selfe at Oxford the three and twentieth day of May in the twentieth yeare of our reigne.

By the King.

WILLIS.

Convenit cum Recordo,

Ita testor,

Will'm's Dugdale,

Norroy Rex Armor.”



## APPENDIX No. VI.

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MINUTES OF PROCEEDINGS OF THE HOUSE OF LORDS IN THE 3rd  
AND 27th HENRY VIII., SUPPLYING A CHASM IN THE FIRST  
VOLUME OF THE PRINTED JOURNALS.

IN some of the Notes to the proceedings on the claim to the Barony of l'Isle, remarks are made on the hardship of rigorously insisting on Sittings in Parliament being *proved*, on the ground that the Rolls of Parliament are very imperfect, and that until the 1st Hen. VIII. when the Lords' Journals commence, no minute was made of the peers who attended, but of those only who were selected to be triers of petitions, or who witnessed a particular transaction in Parliament.

Since the 1st Hen. VIII. it has been considered that the Lords' Journals record the names of the peers who were present on each day of Parliament, with the exception of the years between the 7th and 25th Hen. VIII., for which period the Journals are presumed to be lost ; but it will be seen from the following articles, that the Journals of the House of Lords are incomplete in other years of that reign, and that some of the original minutes of its proceedings have been dispersed. The importance of every Parliamentary document, as well in relation to proofs of sittings as for other purposes, renders it desirable that an accurate copy of those articles should be inserted.

The memoranda in question are preserved in the Harleian MS. No. 158, and they are not only unquestionably contemporary with the time to which they relate, but bear internal evidence of having been written *in Parliament* as notes of the proceedings.

The two first of these articles are minutes of the proceedings on the 24th and 25th days of Parliament in the 3rd Hen. VIII., namely, Tuesday the 2nd, and Wednesday the 3rd of March, 1512. The bills which are there said to have been read on the 24th day of that Parliament, agree exactly with the entries on those days on the Lords' Journals'; but the names of the peers who attended in Parliament in the 3rd Hen. VIII. are not mentioned on the Journals, with the exception of the third day, the 6th February, when the King was present<sup>2</sup>.

With respect to the proceedings on the 25th day of that Parliament, *no notice whatever* occurs on the Journals, and it is manifest from the statement in the MS. that *no business* was then transacted; but that in consequence of the *absence* of the spiritual peers, it was adjourned until the following day, and the next entry on the Journals is for the 26th day of that Parliament.

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[*Harleian MS.* 158, f. 135.]

"Memorand' q'd die Martis Vicesimo quarto die Parliamenti  
sc'do die Marcij fuerunt p'sentes subsc'pti dn'i videl't.

p' Archiep'us Cantuar'

p' Ep'us London'

p' Ep'us Wynton'

p' Ep'us Landven'

p' Ep'us Norwicen'

p' Ep'us Couentr' & Lich'

p' Ep'us Hereforde.

p' Ep'us Roffen'

p' Ep'us Exon'

Ep'us Cirencestr'

Ep'us Bangoren'

p' Ep'us Assauen'

<sup>1</sup> Vol. i. page 14.

<sup>2</sup> *Ibid.* p. 11.

- p' Ep'us Meneuen̄  
    Abbas Westm̄  
p' Abbas s'ci Albani  
    Abbas de Bury  
    Abbas Glaston̄  
    Abbas de Ramsey  
    Abbas b' Marie Ebor'  
p' Abbas de Redyng  
p' Abbas de Bello  
p' \_\_\_\_\_ abbas de Hide [sic]  
    Abbas de Hulmo  
ed Abbas Wynhecombe  
p' Abbas Cirencestr'  
p' Abbas de Waltham̄  
    Abbas s'ci Augustini Cantuar'  
    Abbas s'ci Petri Gloucestr'  
p' Abbas de Burgo s'ci Petri  
p' Abbas de Colcestr'  
p' Abbas de Tewkesbury  
  
p' Ep'us Dunoln̄  
  
p' Dux Buk'  
p' Thomas Marchio Dors'  
p' Comes Northumbr'  
p' Comes Surrey  
p' Comes Salop'  
p' Comes Essex'  
p' Comes Kanc'  
    Comes Derby  
p' Comes Wyltes'  
  
    Prior s'ci Johis Jf̄lem̄  
  
    Dñ's Ormonde  
p' Dñ's Clyfforde  
p' Dñ's Fyz Water  
p' Dñ's Herberd  
p' Dñ's Burgaybeney

p' Dñ's Youche  
Dñ's Willoughby  
p' Dñ's dela Ware  
p' Dñ's Dacre  
Dñ's Ferrys  
p' Dñ's Scroppe  
Dñ's Fyzhewe  
Dñ's Dudley  
p' Dñ's Latymer  
Dñ's Stourton  
p' Dñ's FyzWaren  
p' Dñ's Bernes  
p' Dñ's Haystyns  
p' Dñ's Mountioye  
p' Dñ's Broke  
p' Dñ's Conyars :

Hodie recepta est billa Ric'i Fowler Militis delib'at', per canc'.

Itm' billa conc'nens phisicos lecta est t'cia vice: lecta est cū addicōne, assent', et missa in domū Cōem.

It'm billa conc'nens apparatū cū p'uisione eidem annex' a domo Cōi adducta, lecta est.

Itm' billa concernens Coriours lecta est iam p'mo.

Itm' billa conc'nens conduccōem aquar' lecta est iam p'mo.

Itm' billa conc'nens porpoyse lecta est iam p'mo.

Itm' recepta est obiectio Edwardi Conway & Anne vx'is eius ad  
(sic) billam Joh'is Burdett ~~p' M' Rotulor'~~ p Jo. More, Jun'.

Itm' billa conc'nens portum Suth' adducta a domo Cōi lecta iam p'mo.

Itm' billa conc'nens Marchionem Dors' & alios itur' extra regnū  
lecta est iam sc'do: & lib'ata sollicitario, cum c'tis puis' eisdem  
bille annex'

Itm' billa conc'nens Joh'em Burdett lecta iam p'mo.

Itm' billa conc'nens Carolum Clyfforde lecta est iam p'mo.

Itm' quedam billa coc'nens coheredes & in simul' Tenentes recepta  
est et adducta p porter.

Itm' hodie recepta est billa conc'nens Juratas in London' adduct' p  
p'fat' Joh'em More Jun' ex mandato d'ni Canc'.

Prouyded' alway that it shalbe lefull' to all' mann' of psones to were all' suche apparell' as they and eu'y of them now have redy made for ther owne weryng and vse <sup>duryng the space of ij yeres nexte after</sup> ~~as longe as the seid apparell'~~ (sic) <sup>the makynge of</sup> ~~shall endure~~ this acte or eny thyng in the same conteyned nott w'tsondyng and therof discharged by his or thor owne othes or othe in eny acc'one of dett or detinewe inditement or p'sentment herafter to be taken' or hadde a geyn' eny suche psone or psones for vsyng or weryng of the same.

Prouyded also that yt shalbe lawfull' to all' Mayres Recordes Aldermen' Shryffes Baylyffs Jurats of the Synke Portes and all' other hede offycers aswell' of all' Cytyes townes and bowroughe corporate as of the synk ports, after' that they have ben' yn' eny suche office or Rome to vse and were all' suche apparell' as they dyde or vsed in tyme of occupacion' and exc'sysyng of theyr' seid offices or eny of them

Prouyded also that yt shalbe lefull' . . ry knyght' sonne heyre apparaunte shall vse & were . . her' apparell velbett Sykks & Furres in lyke mann' . . . forme as the Barons of the Kyngs Esche . . er' may d . . .

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[*Ibid.* fo. 135, b.]

Memorand' q'd die Marcurij vicesimo q'into die p'liamenti t'cio die Marcij fuerunt p'sentes susc'pti dn'i. videl't:

p' Comes Essex'  
 p' Comes Kanc'  
 p' Dn's Mountioye  
 p' Dn's Conyars  
 p' Dn's Dudley,

Hodie dn's Thesaurarius ex mandato dn'i Regis dn'o Cancellario ac cet'is dn'is sp'ualib' absentib' & in conuocico'e occupatis continuauit p'sens pliamentu' vsq' in crastinu' hora consueta.

Hodie ex mandato dn'i Regis

<sup>1</sup> This commences on one side of the list of Barons, and is continued on the opposite side

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The following relate to the Proceedings in the Parliament which met on Friday, the 4th of February, 27 Hen. VIII. 1536, of which Parliament, *not the slightest notice occurs on the Lords' Journals.*— That a Parliament did meet on that day, is proved by the Rolls of Parliament', and by the Statutes of the Realm; hence these MSS. supply a chasm in the Records of the House of Lords, and are consequently of great value.

[*Harleian MS.* 158, f. 136<sup>b</sup>.]

Memorand' q'd die Ven'is videl't quarto die mensis Februarij Ad quem diem p'rogatum fuit p'sens pliamēt' Converunt P'ceres Spūales & temporales loco consuet' quor' nōia subscribunt' Anno regni dn'i Henrici octauī Dei gr'a Anglie & Francie Regis fidei defensoris dn'i Hib'nie ac in terra supremi Capit' Eccl'ie Anglicane Vicesimo septimo v2

p' Ep'us Bangorn'

p' Dux Norff.

p' Ep'us Elien'

p' Dux Suff.

p' Comes Oxon'

p' Comes Rutland'

p' Comes Wylteshire

p' Comes Sussex

p' Comes Huntynghon'

p' Abbas Glaston'

p' Abbas de Waltham

p' Prior S'ci Joh'is Jer'lm'

p' Dn's Awdeley

p' Dn's Rocheford

p' Dn's Talbott

p' Dn's Dacres de Gyllysland

p' Dn's Ferrers

p' Dn's Cobh'm

Hodie dn's Cancellar' Anglie declaravit P'cerib' tam spūalib' q'm temporalib' huius regni Anglie in Cam'a parlamenti congregat' Q<sup>d</sup> Thomas p'missione Divina Archiep'us Cantuar' misit ad eum vt obsecrare vellet Dn's in p'liamento congregat' constituere vnam diem in Septimana qui eis maxime necessar' videbit' p Dn's spūa-

<sup>1</sup> Printed at the commencement of the first volume of the Lords' Journals, p. ccxlv.



libus in Convocacōe eor' circa negocia eor'dem in Convocacōe h'it' Et p dnōs decret' fuit qd' die Lune px' sequen' incipient Convocacōem Tenend in Cathedrali eccl'ia s'ci Pauli London' loco solito et ita singulis septimanis vna dies videl't Luna p dn'is spūalibus constitut' est Et preterea p Dnōs decret' fuit qd' nullatenus aliq'm aliam pret'mittent diem preter hanc Lunam et Dn'icam Quin pntes adsint in Cam'a p'liamenti p'dict' hora nona, ad tractand' circa negocia reipublic' necessar' huius regni Anglie. Et hac die nihil aliud actū fuit in Cam'a pred'ca Sed post declaracōem pred'cam Dn's Cancellar' continuavit p'n's parliamentū in Crastino vsq' ad horam nonam."

[*Ibid.* f. 136.]

" Memorand' qd' die Sabb'i quinto die Februarij Secundo die P'liamenti post progacōem dñi quor' nōia subscribunt' p'fuerunt, vñ.

p' Ep'us Bath.

p' Ep'us Elien'

p' Ep'us Bang'

p' Ep'us Dunlien'

p' Dux Norff.

p' Dux Suff.

p' Comes Oxonie

p' Comes Westm'

p' Comes Derby

p' Comes Rutland'

p' Comes Wyltshire

p' Abbas S'ce Marie Ebor'

p' Comes Sussex

p' Comes Huntyngham

p' P'or S'ci Joh'is Jer'lm'

p' Dn's Rocheford'

p' Dn's Dacres de Gyllysland'

p' Dn's Cobham'

, From the very careless manner in which these valuable papers are fastened in the volume, these names are nearly covered by a piece of white paper being pasted over them.

p' Dñ's Talbott  
p' Dñ's Ferrers  
p' Dñ's Powez  
p' Dñ's Sands  
p' Dñ's Vaulx  
p' Dñ's Bray

Dñ's Cancellarius Continuauit hoc p'sens pliament' vsq; in diem  
M'tis px' hora consuet."

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[*Ibid.* f. 137-8.]

Sol'

Memorand' qd' quarto die mensis Februarij Anno R. R. Henrici octauī xxvij<sup>mo</sup> recept' sunt l're pcur' in quib' Abbas Salop' sub Regia gracia Absens Attesta Rev'end' in Xpo p'rem *Joh'em Abb'em de Hyde et' Rob'tum Abbatem exemti Monasterij S'ce Cruc' de Waltham suū Constituit esse pcur', coniunctim et diuisim.*<sup>2</sup>

o Eodem die Recept' sunt l're pcur' in quib; Abbas de Abyngton' A pliamento Absens sub Regia licencia Attestante *Mag'ro Wellesborn'* Constituit Abbatem Westm' suū esse pcuratorem.

o Eodem die Recept' sunt l're pcur' in quib' Prior de Coventr' sub Regia gracia Absens Attestante *Mag'ro Wigeston* Constituit Abbatem S'ci Petri Westm' suū esse pcur'

+ Sol' Eodn' die Recept' sunt l're pcur' in quib' Dñ's FytzWaren' sub gracia Regia Absens Attestante Thoma Duce Norff' Dñ'm Sands suū Constituit esse pcuratorem.

Eodem die Recept' sunt l're p'cur' in quib; Dñ's Delaware A pliament' absens sub Regia licencia Attestante Thoma Cromwell principale Secretor' Dñ'i Regis, Dñ'm Rochefford' suū Constituit esse pcuratorem *Remanent' cū eodem Thoma Cromwell.*<sup>2</sup>

Eodem die Recept' sunt l're pcur' in quib; Rob'tus Cicestren'

<sup>1</sup> The words in italics are an interlineation.

<sup>2</sup> The words in italics have been subsequently added.

Ep'us sub Regia gracia absens Attestante *Thoma Comite Wiltsh'*  
suos Constituit esse pcur'

*Sol'* Hodie videl't Sexto die mensis Februarij A° sup'd'co Recept' est  
billa manu Regis sionat' in quo Abbas de Thorney a pliamen't  
Absens sub Regia licencia Attestante.

+*Sol'* Hodie videl't septimo die mensis Februarij A° p'd'co Recept'  
sunt l're pcur' in quib; Ep'us Carliolenc' sub Regia gracia Absens  
Attestante Willm'o Kyngston' Milit' Cutb'tum Dunolen' Epm' suū  
Constituit esse pcur'

*o. Sol'* Hodie videl't nono die mensis Februarij Anno Sup'd'co Recept'  
sunt l're pcur' in quibus Abbas de Ramsey a pliamento absens sub  
Regia licencia attestante *Joh'e Russ* . . . *Mi*<sup>1</sup> . . .

*O+Sol'* Hodie videl't decimo die mensis Februarij Anno sup'd'co Rece  
. . . . . pcur in quibus Ep'us Meninen' sub Regia licencia a plia-  
ment' Absens Attestante . . . . . Ep'os London' & Lyncoln' suos  
constituit esse pcuratores.

*o+Sol'* Hodie videl't xij° die mensis Februarij A° p'd'co Recept' sunt  
. . . . . in quib; dn's Lumley sub Regia licencia a pliamen't' Absens  
Attestante Thoma Cromwell principali Secretorio dn' R', *Georgiu'*  
*dn'm Rocheford*<sup>1</sup> suum constituit esse pcur'.

*o+Sol'* Hodie videl't xv<sup>mo</sup> die mensis Februarij A° Sup'd'co Recepte  
sunt l're pcur' in Quibus Comes Northumbr' sub Regia licencia a  
pliamen't' absens *Attestante Thoma Crumwell*<sup>1</sup> Thomam Comit' Wil . .  
. . . suū constituit esse pcurat'.

Hodie videl't vicesimo secundo die mensis Februarij Anno in-  
frascr' Recepte sunt l're procur' in quib; Comes Arundell sub Re-  
gia licencia a pliamento Absens Attestant' Thoma Comite Wiltsh'  
dc'm Thomam Comit' Wiltsh' et Georgiū dn'm Rocheford suū con-  
stituit esse procurat' Et Remanent cū Comit' Wiltsh'.

<sup>1</sup> The words in italics have been subsequently added.

*Sol'* Eodem die Recept' sunt l're pcur' in quib' Abbas s'ci Joh'is Colcestrie sub Regia licencia A pliamet' Absens Attestante Thoma Awdeley Cancell' Angl' Comitem Oxon' & Comitem Sussex' Necnon Reu'endos patres Abbatem Burgi s'ci Edmūdi Abbatem de Hida & Abbatem S'ci *Bened'ci de Hulmo*<sup>1</sup> suos constituit esse pcur'.

*Sol'* Eodem die Recept' sunt l're in quib; Abbas de Evesh<sup>m</sup> sub Regia licencia a pliamento absens Attestante. Reu'endū in Xpo p'rem Joh'em Abb'em de burg' s'ci Ed'i suū constituit esse pcurat'

*Sol'* Eodem die Recept' sunt l're pcur' in quib; Abbas de Winche-combe sub regia licencia absens attestante Mag'ro Kingeston et Mag'ro Welche Reu'end' in Xpo p'rem Abb'em Westm' suū constituit esse pcur'

Eodem die Recept' sunt l're pcur' in quib; Abbas de Glaston-  
*Sol'* sub Regia licencia absens attestante . . . . . Ep<sup>m</sup> Bang' suū constituit esse . . . . .

+*Sol'* Hodie videl't xxiiij<sup>o</sup> die Februarij Recept' sunt l're pcur' in quib; Abbas de Berdney sub Regia licencia Absens Attestante Abb'tem de Waltham s'ci Crucis suum constituit esse pcur'

Hodie videl't xxvj<sup>to</sup> die Februarij Recepte sunt l're pcur' in quib; Dñ's Conyers sub Regia licencia absens attestante Henrico Norreys Georgio Lawson.

<sup>1</sup> Interlined, and added afterwards.

## ADDENDA.

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PAGE 246.—It is erroneously said in note 2, page 246, that no question of Precedency is noticed on the Rolls of Parliament where the parties were below the rank of Earls, a mistake which arose from there being no reference to the following instance in the Index to that work under the word "Precedency."

In the 4th Hen. VI. 1425, Reginald Lord Grey of Ruthyn, presented the following petition :—

"To the right high and myghty prynce, Duc of Bedford and alle the lordes of this present Parlement Louly besechith zou Reynald de Grey, Lord Hastynges, Weyfford, and of Ruthyn, to remembre the Bille nou late I put to our sovereyn lord in this present Parlement for my place of Sete to me acustomed, the whiche I have at alle tymes pesybly used and occupied, bothe in Conseiles and in Parlements, into the tyme that nou late John Lord Talbot usurped, and wrongfully put me out. That ze, my Lord of Bedford, and alle my lordes, wile consideren the wrong and the grevance of me the the said S<sup>r</sup> Reynald, and do me right in this seid present Parlement. Also, qwher that I am bounde to the pes, and have founde surete, the whiche surete I purpose never to atempte nor breke. Wherefore plesse zou my lord, and all my lordes, that the seid John Lord Talbot be charged to finde sufficeant surete to bere pes to me, and alle the Kynges peple, in this present Parlement, the whiche surete may be here enacted, and of record'."

There is no notice on the Rolls of Parliament of any other proceedings on the subject.

Whilst alluding to Precedency, it may be desirable to add, that the

<sup>1</sup> *Rot. Parl.* vol. iv. p. 312.

dispute on the point between the Earls of Arundel and Devonshire in the 24th Hen. VI. 1446, was referred by the king to the lords in parliament; but they not having time to settle the question, his Majesty, by their advice in the parliament in February, 27 Hen. VI. 1449, commanded that the judges, then present should hear and determine the claim, and report thereon to the King and to the lords in the said parliament.

The Judges, however, after ascertaining the facts, declared that it was "mater of parlement longyng to the kyng's highnesse and to his lords spirituall and temporell in parlement by theym to be decyded and determynd;" and the King, by the advice and with the assent of the lords in parliament, consequently determined the claim in favor of the Earl of Arundel<sup>1</sup>.

It would appear from the arguments of counsel on the occasion of the claim to precedence by the Earl of Arundel, the Earl Marshal, over the Earl of Warwick in the 3rd Hen. VI., that the manner in which the names of peers occur in testes to patents, as well as in other public instruments, indicated their precedency. Sir Walter Beauchamp, the Earl of Warwick's counsel observed "that in Patenttes writyng of Kyng Richard, where that he yaf to Thomas Duc of Gloucester, both Holdernesse and Okeham, that in the testes is write, my Lordes Fadre of Warrewyk, byfore my Lordes Fadre Mareschall. Also the same Wauter seyeth, that in Kyng Richard tyme, there was a Lettre sent unto the Pope for provision and other matters necessities for this Roialme in whiche Lettre was write the names of Ducs and Erles of this Lond, and in that Lettre was writen the name of my Lordes fadre of Warrewyk, bifore the name of my Lord Mareschall, fadre to my Lord that nowe is and the lettre sealed with her seales in the same ordre<sup>2</sup>." The counsel for the Earl Marshal explained the cause of the fact alleged by Sir Walter Beauchamp by saying, that the said Earl had neither the arms nor the inheritance of Thomas de Brotherton, for his grandmother the Countess of Norfolk was then alive; but so far from denying that the place where names occur as witnesses to patents indicated precedence, he proceeded to cite patents of the reigns of

<sup>1</sup> *Rot. Parl.* vol. v. p. 148.

<sup>2</sup> *Ibid.* vol. iv. p. 267 b.

Henry the Third and Edward the Third, in which the name of the Earl of Norfolk occurred before that of the Earl of Warwick'.

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PAGE 284.—In the note to page 284, the accuracy of Lord Redesdale's opinion, that the words to "heirs of the body" of the grantee of a dignity, were not considered to have the effect of conveying a peerage to such heirs, is questioned; and as the case of the earldom of Norfolk tends still further to support the doubt which is there expressed, that case is here stated.

In the 6th Edw. II. the King created his half-brother, Thomas de Brotherton, Earl of Norfolk, which dignity, the patent states, had fallen into the hands of King Edward the First in consequence of the surrender of Roger le Bygod in the 30th Edw. I. The limitation to Brotherton was "*Habend' et tenend', eidem Thome, et hereditibus suis de corpore suo legitime procreatis.*" The earl died in 1338; and Margaret, his eldest daughter and eventually sole heiress, became *Countess of Norfolk*<sup>1</sup>. She died in 1399 without male issue, when the title devolved on her grandson and heir, Thomas de Mowbray, (son of Thomas de Mowbray, who in 1397 was created Duke of Norfolk, but which dignity was erroneously presumed to have been forfeited on his death,) the Earl Marshal and Earl of Nottingham. In the 3rd Hen. VI. he claimed precedence of the Earl of Warwick, but before the dispute was settled he presented a petition claiming the Dukedom of Norfolk under the patent to his father; in which petition he prayed that he might be so reputed, "saving always the title, right, and possession of me, and mine heirs of my body coming, as Earls of Norfolk to my place in this high Court [of parliament] above my said cousin of

<sup>1</sup> *Ibid.* p. 269 b.

<sup>2</sup> By the title of "*Margarete Countesse de Norfolk et Dame de Segrave,*" she petitioned the King in parliament in the 1st Ric. II. 1377. *Rot. Parl.* vol. iii. p. 30. She was styled "*Dame de Northfolk*" in the 17th Ric. II., *Ibid.* p. 327. In the 20th Ric. II. she was styled by the King, in a patent, "our dear cousin Margaret Countess of Nofolk." *Ibid.* p. 344; and when she was created Duchess of Norfolk in the 21st Ric. II. the words on the Rolls of Parliament are "*Notre Seigneur le Roy veulent honorer, enhauncer, et enrescer le Noun et l'Estat de sa honorable Cousine, Margarete Mareschall, Countesse de Northfolke,*" &c. *Ibid.* p. 355.

Warwick and his heirs, because the name of Duke of Norfolk is tailed to me, *to my heirs males of my body coming*, and the name of Earl of Norfolk is tailed to me, and *to my heirs of my body coming generally*. Beseeching meekly unto your high and noble grace, that this my supplication and all other matters unto this your said parliament by me and mine counsel notified, ministered, and declared, in proof of my place for to be had as Earl of Norfolk, above my said cousin of Warwick, may be, in this your parliament, entered, and of record enact.<sup>1</sup>"

These facts establish that the words "heirs of the body" of a grantee were deemed to convey a dignity to his *heirs-general* from the 12th Edw. III. 1338 to the 3rd Hen. VI. 1424, which embraces the period when the case of the earldom of Suffolk, to which Lord Redesdale alluded, took place : hence the only question that can arise on that case is, whether when a dignity, *granted to heirs-general by patent*, fell into *abeyance*, the Crown had the power of conferring it on any other person than a co-heir, or whether the co-heirs of the Earl of Suffolk were unjustly treated. It might be deserving of inquiry, whether the earldom of Norfolk, created by patent of the 6th Edw. II. to Thomas de Brotherton, and which fell into abeyance between the Lords Howard and Berkeley on the death of Anne, daughter and heir of Thomas Mowbray, Duke of Norfolk, does not still remain in abeyance; or whether it was determined by the grant of the earldom of Norfolk to Thomas Howard, Earl of Arundel, in 1644; but as the former grant was to *heirs-general*, and the latter to the *heirs male* of the said Thomas Howard, the said grant of 1644 would, according to the decision in the Lumley case, probably be deemed a creation of a distinct dignity.

<sup>1</sup> *Rot. Parl.* vol. iv. p. 272.

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#### ERRATUM.

A mistake occurs in the note to page 109, by its being said that the title of "Lady l'Isle" was attributed to Margaret Countess of Shrewsbury on her monument : the fact is, that the title in question with that of Tyes were ascribed to *her mother Elizabeth* Countess of Warwick in the inscription alluded to. See note, page 9.



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